

Director's Protest Resolution Report

**Monticello
Resource Management Plan**

November 14, 2008



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

Report Snapshot

Issue Topics and Responses

NEPA — Topic heading

Submission number

Protest issue number

Issue Number: PP-CA-ESD-08-0020-10

Organization: The Forest Initiative — Protesting organization

Protester: John Smith — Protester's name

Issue Excerpt Text: — Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary — General statement summarizing the issue excerpts (optional).

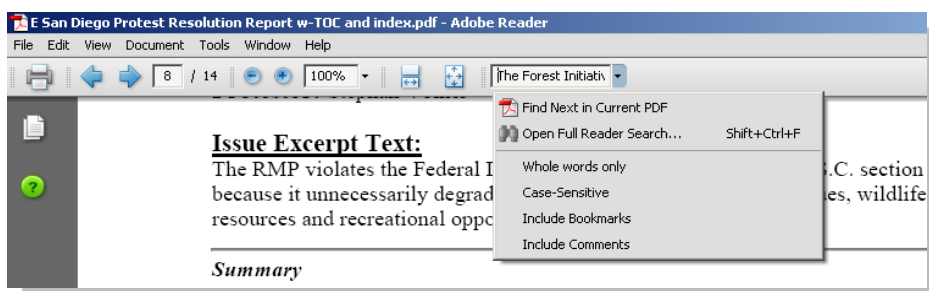
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response — BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
APD	Application for Permit to Drill	IM	Instruction Memorandum
BA	Biological Assessment	MOU	Memorandum of Understanding
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act of 1969
BMP	Best Management Practice	NHPA	National Historic Preservation Act of 1966, as amended
BO	Biological Opinion	NOA	Notice of Availability
CAA	Clean Air Act	NOI	Notice of Intent
CEQ	Council on Environmental Quality	NRHP	National Register of Historic Places
CFR	Code of Federal Regulations	NSO	No Surface Occupancy
COA	Condition of Approval	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CSU	Controlled Surface Use	RFDS	Reasonably Foreseeable Development Scenario
CWA	Clean Water Act	RMP	Resource Management Plan
DM	Departmental Manual (Department of the Interior)	ROD	Record of Decision
DOI	Department of the Interior	ROW	Right-of-Way
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	VRM	Visual Resource Management
FEIS	Final Environmental Impact Statement	WA	Wilderness Area
FLPMA	Federal Land Policy and Management Act of 1976	WSA	Wilderness Study Area
FO	Field Office (BLM)	WSR	Wild and Scenic River(s)
FWS	U.S. Fish and Wildlife Service		
GIS	Geographic Information Systems		

Protesting Party Index

Protester	Organization	Submission Number	Determination
	Center for Native Ecosystems	PP-UT-Monticello-08-0017	Granted in Part
	Glen Canyon Institute	PP-UT-Monticello-08-0017	Granted in Part
	Grand Canyon Trust	PP-UT-Monticello-08-0017	Granted in Part
	Great Old Broads for Wilderness	PP-UT-Monticello-08-0017	Granted in Part
	Public Employees for Environmental Responsibility	PP-UT-Monticello-08-0017	Granted in Part
	Red Rock Forests	PP-UT-Monticello-08-0017	Granted in Part
	Sierra Club, Utah Chapter	PP-UT-Monticello-08-0017	Granted in Part
	Southern Utah Wilderness Alliance	PP-UT-Monticello-08-0017	Granted in Part
	The Wilderness Society	PP-UT-Monticello-08-0017	Granted in Part
Abboud, Jerry	Colorado Off Highway Vehicle Coalition	PP-UT-Monticello-08-0005	Dismissed-Only Comments
Adams, Bruce	San Juan County	PP-UT-Monticello-08-0010	Granted in Part
Bellagamba, Susan	The Nature Conservancy	PP-UT-Monticello-08-0012	Dismissed-Only Comments
Carter, John	Western Watersheds Project	PP-UT-Monticello-08-0018	Denied-Issues Comments
Cukjati, Gary	National Outdoor Leadership School	PP-UT-Monticello-08-0016	Denied-Issues Comments
Danenhauer, Mark	Utah Rivers Council	PP-UT-Monticello-08-0009	Denied-Issues Comments
Hays, Ti	National Trust for Historic Preservation	PP-UT-Monticello-08-0015	Granted in Part
Hinchey, Maurice	U. S. House of Representatives	PP-UT-Monticello-08-0020	Dismissed-Only Comments
Kleiner-Roberts, Amy	Outdoor Industry Association	PP-UT-Monticello-08-0016	Denied-Issues Comments
Levek, Amy	Individual	PP-UT-Monticello-08-0001	Dismissed-Only Comments
McCourt, Patty	Individual	PP-UT-Monticello-08-0003	Denied-Issues Comments
McKinnon, Kristen	Wild Rivers	PP-UT-Monticello-	Dismissed-Only

	Expeditions	08-0004	Comments
McKinnon, Kristen	Wild Rivers Expeditions	PP-UT-Monticello-08-0019	Granted in Part
Peterson, Tim and Rose Chilcoat	Great Old Broads for Wilderness	PP-UT-Monticello-08-0008	Granted in Part
Ratcliff, Thomas	Individual	PP-UT-Monticello-08-0013	Dismissed-Only Comments
Riggle, Don	Trails Preservation Alliance	PP-UT-Monticello-08-0005	Dismissed-Only Comments
Robinson, Steve	Utah Rock Art Research Association	PP-UT-Monticello-08-0002	Denied-Issues Comments
Schelz, Charles	ECOS Consulting	PP-UT-Monticello-08-0007	Denied-Issues Comments
Severance, Owen	Individual	PP-UT-Monticello-08-0006	Denied-Issues Comments
Sgamma, Kathleen	Independent Petroleum Association of Mountain States	PP-UT-Monticello-08-0011	Denied-Issues Comments
Spangler, Jerry	Colorado Plateau Archaeological Alliance	PP-UT-Monticello-08-0014	Denied-Issues Comments

Issue Topics and Responses

NEPA

Close Examination of Baseline Data and Modeling

Issue Number: PP-UT-MONTICELLO-08-0018-12

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

If the agency cannot provide baseline inventory and analytical information to support leaving the majority of the lands in the Planning Area open to OHV use, then the BLM has not adequately supported its alternatives or the decisions made in the RMP.

Issue Number: PP-UT-MONTICELLO-08-0018-33

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

While admitting that OHVs, as a surface-disturbing activity, impacts cultural, soil, paleontological, riparian and wildlife resources, similar to the inadequate analysis of livestock grazing, the RMP does not analyze the baseline condition of the planning area OHV use. BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation.

Issue Number: PP-UT-MONTICELLO-08-0018-40

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

The RMP provides no inventory or baseline information on biological crusts within the planning area, and barely acknowledges that crusts are present.

Issue Number: PP-UT-MONTICELLO-08-0018-43

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

The RMP fails to present any baseline or other inventory data on weeds and invasives, in particular, the most significant vectors spreading weeds: livestock grazing and OHVs.

Issue Number: PP-UT-MONTICELLO-08-0018-46

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

RMP also fails to present any baseline or other inventory data on the effects of OHV use within the planning area.

Issue Number: PP-UT-MONTICELLO-08-0018-47

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

Prior to making a decision that leaves the majority of the planning area open to OHV travel, the BLM must collect the type of baseline information required by FLPMA. Until then, it is arbitrary and capricious to authorize OHV use on these public lands.

Issue Number: PP-UT-MONTICELLO-08-0018-52

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

The RMP maintains the status quo by continuing with the same authorized use level and grazed areas with only de minimus changes between alternatives. By failing to adequately assess on-the-ground conditions and the impacts of current livestock grazing in the resource management planning process, the BLM has maintained the status quo by default. As a result, the RMP does not constitute a reasoned and informed decision in the public interest, with respect to whether the land within the planning area can continue to endure livestock grazing.

Summary

The BLM has not presented baseline inventories and evaluations that allow assessment of the impacts of livestock grazing and OHV use on other resources, including biological soil crusts. This violates NEPA's requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential environmental consequences.

Response

The requisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The baseline data provided in Chapter 3 and in various appendices in the PRMP/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the PRMP/FEIS and augmented through the Appendices.

A land use planning level decision is very broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although the BLM realizes that more data could always be gathered, the baseline data used is adequate to form the basis for informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation level documents, such as for oil and gas field development, allotment management plans, grazing permit renewals, and public land use authorizations. These activity plan-level analyses will tier to the land use planning analysis and extend the environmental analysis by using information from any specific project proposal. In compliance with the NEPA process, the public will have the opportunity to participate in the environmental analysis process for these actions.

Throughout the land use plan revision process, the BLM considered the availability of data from all sources, the adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan level. During development of the PRMP/FEIS, the BLM reviewed all its internal files, including range, OHV monitoring, and wilderness files, and many other types of internal documentation.

The data requirements for a land use plan-level analysis of the planning area, which comprises 4.5 million acres of land, including approximately 2.5 million acres of mineral estate and 1.8 million acres of public land administered by the BLM, is far different and less extensive than what would be utilized for an implementation-level EIS with a well-defined proposed action. Much of the data in the PRMP/FEIS is presented in map form and is sufficient to establish the gross scale types of impact analyses required. The BLM used the most recent and best information available that was relevant to a land use planning scale of analysis. During preparation of the RMP/EIS, the BLM consulted with and utilized data from other agencies/sources, including but not limited to: U.S. Geological Survey; Utah Department of Wildlife Resources; Utah Geological Survey; Utah Division of Oil, Gas and Mining; US Fish and Wildlife Service; Natural Resource Conservation Service (NRCS); Native American Tribes; and Utah Department of Environmental Quality.

The BLM consulted with its cooperating agencies and other agencies with jurisdiction or expertise on the analysis and incorporation of available data into the PRMP/FEIS. Considerations included but were not limited to: big game herd numbers and trends; migratory routes and uses; crucial elk habitat areas (i.e., wintering, calving), locations, and sensitivities; greater sage-grouse breeding, nesting, brood-rearing and wintering areas; threatened and endangered species and their habitat; oil and gas development potential; livestock grazing use; uses on State lands; and heritage resource values including traditional Native American concerns.

As a result of these consultations, the Field Office gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail. The BLM utilized the available data to provide an adequate and reasoned analysis, which led to disclosure of the potential environmental consequences of the PRMP proposed alternative and other alternatives (PRMP/FEIS at 4-1 to 4-787). As a consequence, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives to enable the decision maker to make an informed decision.

With regard to specific points raised by protesters:

Soils and macrobiotic crusts: Soil surveys and ecologic site descriptions are provided by the Natural Resources Conservation Service (NRCS) (See NRCS 1993. Soil Survey of San Juan County, Utah, Central Part). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. In accordance with the BLM planning handbook (H-1601-1), the Monticello RMP identified specific soils that may need special protection and displayed these soils on Maps 41 through 47. Baseline information on soils, including biological soil crusts, is presented in Section 3.14.4. While there has not been a systematic inventory of soil crusts within the decision area, the BLM has data that confirms the existence of small areas of more dense soil crusts, especially in areas with less dense vegetative cover. The BLM fully acknowledges the important role macrobiotic crusts serve on rangelands and forested landscapes. The BLM interdisciplinary team determined that if an ecological site is functional and healthy, the amount of biological crusts present is adequately supporting ecological processes in conjunction with the vascular plants. The DRMP/DEIS management alternatives address the overall functioning and ecological condition of an entire planning unit rather than attempting to manage for the health of biological crusts alone. The alternatives in the EIS are designed to maintain or improve overall rangeland health, thus functioning rangelands in healthy condition are assumed to maintain biological soil crusts at an appropriate level and distribution. The impacts to biological soil crusts at landscape levels are addressed in Chapter 4 of the PRMP/FEIS, commensurate with the broader level of decision making in the PRMP/FEIS. Site-specific impacts to biological soil crusts will be discussed in implementation-level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

OHV and grazing impacts on other resources: The impacts of OHV use and grazing on natural resources are adequately analyzed in Chapter 4 of the PRMP/FEIS, including the No Action alternative. Chapter 3 of the PRMP/FEIS presents the baseline (current situation) for analysis in Chapter 4. It discusses baseline issues surrounding cross-country OHV travel currently permitted by the existing land use plan in the Field Office planning area. The impacts associated with cross-country OHV use are described in Chapter 4 under the No Action Alternative. The existing routes are considered part of the baseline, and therefore, it is not reasonable to consider the impacts to vegetation from existing linear disturbances. However, the impacts from the current situation are considered in the cumulative analysis. A sufficient analysis that includes discussion of potential impacts from OHV travel is provided in section 4.3.16 of the PRMP/FEIS. This analysis is also adequate to determine how the Proposed Plan affects outcomes for wildlife identified in the Utah Division of Wildlife Resources Comprehensive Wildlife Conservation Strategy (2005).

Grazing utilization and impacts from grazing on other resources: Livestock grazing decisions at the RMP planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. According to the BLM's policy, PRMP/FEIS at 2-196, decisions regarding authorized livestock use, levels and the terms and conditions under which they are managed are implementation decisions (H-1610-1, Appendix C, p. 15). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates these data on a periodic basis, normally on an allotment and/or watershed basis. After NEPA analysis, changes to livestock management deemed necessary to meet or progress toward meeting management objectives and to conform to Utah's "Guidelines for Rangeland Management" are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of livestock use at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance rangeland health. In light of this process for making subsequent site-specific grazing decisions, the baseline information disclosed in the FEIS is sufficient to support the administrative record for this RMP and the broad-scale decisions concerning grazing.

Analytical Discussion of Impacts

Issue Number: PP-UT-MONTICELLO-08-0018-17

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

The RMP fails to provide an adequate discussion of impacts to various resources, including a failure to incorporate best available information into the analysis. WWP highlighted this issue in its comments on the Draft RMP/EIS with respect to biological crusts, livestock grazing, off-road vehicle use, fire frequency, invasive species, loss of ecosystem resiliency in the face of climate change and other issues. Dozens of scientific papers and government reports were cited. The RMP ignored this information and the PRMP continues to provide no explanation for the omission of relevant scientific research on topics critical to the management of the public lands, or for that matter, research that has documented the impacts of livestock grazing and OHVs to forests, riparian areas, soils and wildlife that was published decades ago and remains accurate today.

Response

The PRMP/FEIS provides an adequate discussion of the environmental consequences of the Proposed Plan and alternatives in Chapter 4. As required by 40 CFR § 1502.16, the PRMP/FEIS provides a discussion of "the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented". The PRMP/FEIS presented the decision-maker with sufficiently detailed information to aid in determining whether to proceed with the proposed plan or make a reasoned choice among the other alternatives in a manner such that the public could have an understanding of the environmental consequences associated with the alternatives.

Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. Therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action. As specific

actions that may affect the area come under consideration, the BLM will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions, such as for oil and gas development, realty actions, allotment management plans, and public land use authorizations, or other ground disturbing activities proposed. These activity plan-level analyses will tier to the RMP analysis and expand the environmental analysis when more specific information is known. The public will be offered the opportunity to participate in the analysis process for any site-specific actions, as required by NEPA.

Response to Comments from San Juan County

Issue Number: PP-UT-MONTICELLO-08-0010-13

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

San Juan County further disputes the acreage identified as crucial elk and/or deer winter range in San Juan County. The crucial deer winter range has gone from 197,550 acres in the current plan to 785,921 in alternatives B & E, 266,406 in alternative C, 182,315 in alternative D, and 383,098 in the proposed alternative. Elk has gone from 0 acres in the current plan to 97,471 in the proposed alternative. San Juan County contracted with Charles E. Kay, a noted Wildlife Ecologist from Utah State University, to evaluate the listed crucial deer and/or elk winter range in the County. The results of this evaluation consisting of pellet group transects, evaluations of browse use, with over 300 supporting photos and over 60 examples of supporting literature cited was furnished to the Utah State BLM office and the Moab Field Office with our May 2008 comments on the draft RMP and EIS. These were titled "An Evaluation of Mule Deer Winter Range on BLM Administered Lands in San Juan County, June 2006, Charles E. Kay" and "Charles E. Kay comments on Moab BLM DEIS dated November 20, 2007." This information should have been considered as new information but was apparently completely ignored by BLM and not even addressed in the BLM's response to comments. Both of these Charles E. Kay evaluations and comments, previously submitted to the BLM, are herewith considered a part of this protest.

Response

New technology, more information, expansion of herds, and a change in Utah Division of Wildlife Resources' (UDWR) classification system in regards to which areas are included in "crucial" big game habitat has changed since the 1991 San Juan RMP. The UDWR submitted those changes (including habitat for an elk herd not accounted for in the 1991 RMP) to the Monticello Field Office in 2005. The BLM considered UDWR crucial habitat acreages and then developed a variation of these acreages by alternative. These habitat acreages and associated stipulations were developed consistent with the management emphasis for each alternative, whether it is resource protection as in Alternative B or commodity development as in Alternative D. The acreages of deer crucial habitat in Alternative C were modified from UDWR's crucial habitat designation to minimize layering of protective measures in areas that already had other resource designations. These designations, such as WSAs and ACECs, although not specifically developed to protect wildlife habitat, may have provided a level of protection for deer habitat in those areas. For the proposed plan, the BLM agreed to use the UDWR crucial habitat acreages statewide for consistency and to prevent confusion as to which areas were actually considered crucial wildlife habitat.

The UDWR is the jurisdictional agency for wildlife management within the State. The BLM relied on the expertise of this agency for delineating wildlife habitats, estimating population numbers, and recommending wildlife restrictions. The UDWR's habitat designations are based on aerial surveys, years of observations, as well as data collected during repeated range trend

surveys. The Range Trend Program is a collaborative effort between UDWR, BLM, USFS, and the Utah Department of Agriculture and Food and began in 1958. Its original goal was to survey each of Utah's deer herd units and determine the areas that deer utilize during normal and severe winters. This Range Trend Program continues today with better methodologies and increases in the number of surveyed areas throughout Utah. Since the Range Trend program cannot monitor every acre of the state, other scientific studies, aerial surveys, and on-the-ground observation of big game use during normal and severe winters are all used to delineate wildlife habitats.

The BLM has reviewed the information provided by the San Juan County consultant. The consultant's review of winter range use was conducted over a small window of time rather than during a long-term period which includes fluctuating winter severities. The BLM acknowledges that some crucial deer and elk winter ranges were not heavily used during years prior to the consultant's visits because of previous mild winters. During severe winters, especially those with deep snow, wintering animals are pushed into areas that are not normally used. These expanded crucial winter ranges are inclusive because one severe winter could decimate over one-half of the deer population in any given area. Due to the fluctuations in winter severities and associated deer and elk use patterns, the BLM allowed for exceptions, modifications and waivers of the stipulations associated with crucial elk and deer winter ranges as shown in Appendix A, pages A-9 to A-12. These exceptions, modifications and waivers can be applied by the Authorized Officer on a case-by-case basis for a myriad of reasons outlined in Appendix A.

Response to Comments from the Outdoor Industry Association

Issue Number: PP-UT-MONTICELLO-08-0016-8
Organization: Outdoor Industry Association
Protester: Gary Cukjati

Issue Excerpt Text:

In the comments on the draft plan, NOLS and OIA addressed numerous concerns relating to visual resource management (VRM) classifications and oil & gas stipulations that are at odds with recreation management decisions. In some cases areas that are VRM class IV are literally surrounded by VRM class I areas. River viewshed and canyon rims are frequently given inadequate buffers. In many cases where low-impact, leave-no-trace practicing educational groups could face serious constraints that will have major impacts on the viability of future operations, view shed management and oil and gas leasing stipulations are lax. This strikes us as an extreme contradiction in land management practice. Please see the attached document, "Unaddressed,

Substantive Comments" for a detailed list of comments that were not responded to.

Issue Number: PP-UT-MONTICELLO-08-0016-9
Organization: Outdoor Industry Association
Protester: Gary Cukjati

Issue Excerpt Text:

NOLS and OIA recommended that the Monticello FO adopt resource management strategies that better protect the integrity of the proposed Cedar Mesa and Dark Canyon SRMAs. We asked that view shed and oil and gas stipulations be adjusted within this area to better accommodate the recommended ROS setting and the desired objectives for the SRMAs. These substantive, specific comments were not responded to in any way. We would like to see a final plan that contains consistent management prescriptions across resources. This plan remains inconsistent.

Summary

The BLM failed to respond to National Outdoor Leadership School (NOLS) and Outdoor Industry Association (OIA) comments regarding visual resource management (VRM) classifications and oil and gas stipulations that are at odds with recreation management decisions.

Response

The BLM reviewed the comments referenced by the protester and determined that they were non-substantive, as they expressed only opinions and preferences for one management prescription over another. Rationale supporting all management decisions will be presented in the Record of Decision.

Response to Comments from the Southern Utah Wilderness Alliance

Issue Number: PP-UT-MONTICELLO-08-0017c-10

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

BLM reduced these substantial comments to the following statement: "The draft EIS does not address the potential socioeconomic costs associated with coal mining and oil and gas drilling." BLM Response to Comments, Sorted by Commenter Type at 307. BLM then responded to this truncated comment: "The socioeconomic cost associated with oil and gas drilling is discussed in detail on pages 4-340-344. BLM Response to Comments, Sorted by Commenter Type at 307. First of all the pages to which we are referred do not contain any discussion whatsoever of the socioeconomic costs associated with oil and gas drilling or mining. However, it is more important that nowhere in the analysis of the impacts of the proposed plan are the sorts of costs detailed in the comments by SUWA ever discussed. Instead, the only detailed quantitative analysis was performed for the market benefits of energy development and grazing. This narrow view is completely inadequate to address all potential impacts to socioeconomic conditions for local communities.

Issue Number: PP-UT-MONTICELLO-08-0017c-12

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

This response misses the point [of the SUWA comment at BLM Response to Comments, Sorted by Commenter Type at 306.]. BLM was presented with a review of pertinent literature on the impacts associated with off-road motorized recreation. Many of these impacts have easily quantifiable economic consequences (see *infra* for a discussion of the

economic impacts of deteriorations in air quality for just one example). BLM has never done an analysis of these economic impacts as requested. This lack of response indicates a general disregard for the science provided by SUWA, and public opinion in general. NEPA requires that BLM discuss "any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency's response to the issue raised" in preparing a final EIS. 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an agency respond in a "substantive and meaningful way" to a comment that addresses the adequacy of analysis performed by the agency.³³

Issue Number: PP-UT-MONTICELLO-08-0017c-7

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

The agency's response to this comment [BLM Response to Comments, Sorted by Commenter Type at 308-309] claims that they are not obligated to perform a cost-benefit analysis. However, if one reads the comments provided in full, that is not exactly what SUWA have requested. Rather, we requested that the agency extend its analysis of the socioeconomic impacts of management of the lands in the Monticello planning area beyond the very narrow range that has been included in the Draft RMP/EIS. The manner in which BLM ignores the substance of the comment is unacceptable. The response fails to address or respond to the concerns raised in substantive comments by SUWA, and is inadequate as a response under 40 C.F.R. § 1503.4. The analysis performed by BLM actions examines only the economic impacts from oil/gas development, grazing, and mining. Economic impacts on recreation, ecological services, and economic diversification have been ignored.

Summary

The BLM failed to substantively respond to SUWA's comments regarding the socioeconomic costs associated with oil and gas drilling and OHV use. The BLM did not consider information submitted by SUWA.

Response

The BLM adequately responded to these issues extensively in the response to DRMP/DEIS comments 26-96, 97, 99, 101, 103, and 104. The BLM recognizes that recreation is the driving force of the planning area economy. The BLM further recognizes that activities which result in resource development and use can impose costs on those users who prefer more pristine settings. Such effects were stated qualitatively. The BLM did not have available and was not required to prepare an analysis of non-market values to quantify these potential effects on the human experience of a relatively undeveloped environment. Contrary to the protester's assertion, analysis of such non-market values and associated impacts is considerably more speculative than the analysis of "hard" benefits, such as those that would result from development and extractive activities. For these reasons, disclosure of anticipated non-market costs is appropriately stated in qualitative terms. The BLM did, however, carefully consider all information submitted by SUWA in this regard.

Response to Comments from Southern Utah Wilderness Alliance regarding Visitor Use Information

Issue Number: PP-UT-MONTICELLO-08-0017c-44

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

In response to this comment, BLM provides that “[t]he commenter does not provide BLM with any information or data; they suggest the Monticello FO should conduct a survey similar to Moab's. However, a range of alternatives for various recreational opportunities is presented by the BLM.” BLM Response to Comment No. 26-18. There are several troubling aspects of the BLM’s response. First, it is not necessary that comments provide BLM with newly generated data in order for the BLM to adequately respond under 40 C.F.R. § 1503.4. Instead, substantive comments, which merit a thorough response, are those that raise questions regarding the accuracy of information or the adequacy of methodology for or assumptions used for the environmental analysis. BLM NEPA Handbook, H-1790-1 at 66. Our comments, and those of other commenters, have identified specific inaccuracies and inadequacies that require an equally substantive response.

Summary

SUWA’s comments, and those comments of others, related to visitor use information have identified specific inaccuracies and inadequacies that require an equally substantive response.

Response

The BLM carefully considered all information submitted by SUWA. The discussion of recreational use in Sections 3.11.3 and 3.11.4, and the data presented in Table 3.22, are based on best available information (generally Recreation Management Information System (RMIS) data), and staff expertise and observations. However, because the BLM does not generally conduct user inventories and surveys, the incomplete nature of this information is acknowledged (PRMP/FEIS at 3-99).

Response to Comments from Great Old Broads for Wilderness regarding a Request for Data

Issue Number: PP-UT-MONTICELLO-08-0008-4

Organization: Great Old Broads for Wilderness

Protester: Tim D. Peterson

Issue Excerpt Text:

The following issue did not receive the attention that it deserved from the then acting Monticello Field Office Manager, The Utah State Director, the Utah State NEPA Coordinator, the Response to Comments or the PRMP or its appendices. The response given by BLM is not adequate, and does not come close to even addressing the issue at hand.

After two visits in person to your office, numerous calls and after receipt of many formal requests, the following documents referenced in the Monticello DRMP/PRMP could not be provided to us by your staff. BLM staff still claim that these documents, maps and digitized maps, do not exist, yet they are referenced in the PRMP at N.8.2.3 (pg. N-15 and 16) and N.9.4.2.4 (pg. N-24). The following information was referenced in both the DRMP and PRMP as "can be viewed at the Monticello FO." Access to these documents was refused to Rose Chilcoat, Associate Director of Great Old Broads for Wilderness when she stopped by the office on the morning of Feb 5, 2008, and again on Feb 7, 2008: Digitized maps of the SPEAR county-wide ATV route system proposal that is referenced in DRMP and PRMP sections N.8.2.3 ("Data provided by SPEAR/SULU, under the name The Canyon Rims Trail System Basic Master Plan" (BLM Monticello PRMP, Appendix N, pg. N-15 and N-16)) and N.9.4.2.4 (The SPEAR routes have been digitized onto a map using the rough hand-drawn map provided by the proponents." (BLM Monticello PRMP, Appendix, pg. N-24)), as well as the comparison overlay with the travel plan routes and all the SPEAR proposal connector routes.

While a one-sheet analysis of the SPEAR proposal was provided, maps of and exactly what the proposal entails were not produced. What was provided was of no use to helping our comments become more substantive. Before any meaningful review and comment of the TMP can be made, this information must be available to the public as required by the Council of Environmental Quality Regulations for Implementing NEPA.

The response to this comment is as follows; the response does not address in any way the BLM's failure to provide the referenced documents: "The BLM provided the public with 90 days to review and comment on the DRMP/DEIS, as required by the BLM land use planning regulations (43 CFR 1610.2(e)). The standard comment period for a DEIS is 45 days in accordance with CEQ regulations at 40 CFR 1506.10(c). Per CEQ regulations, the BLM planning and NEPA processes are integrated. Therefore, the BLM provides a 90-day comment period doubling the amount of time for the public to review and comment on the DRMP/DEIS. The BLM made the DRMP/DEIS available, free of charge to the public, in a variety of mediums, including paper, CD, and online. In addition, the BLM staff has offered to meet individually with groups or individuals to explain the DRMP/DEIS and help focus review and comment resource use or resource protection to give the public the ability to fully compare the consequences of each management prescription or action. The BLM believes that Alternative C, the preferred alternative, represents a balance of land uses and therefore fulfills the FLPMA mandate." (BLM, Comments by Commenter Type.pdf, pages 334-335)

Clearly, this response is not sufficient, as it does not address the fundamental issue of missing maps and data. By not making the data provided by SPEAR/SULU, under the name "The Canyon Rims Trail System Basic Master Plan" available, the BLM has violated the CEQ regulations implementing NEPA. Council of Environmental Quality - Regulations for Implementing NEPA See, 1502.21 Incorporation by reference.

Summary

BLM staff claim that these documents, maps and digitized maps do not exist, yet they are referenced in the PRMP at N.8.2.3 (pg. N-15 and 16) and N.9.4.2.4 (pg. N-24).

Response

The BLM has conducted an additional search for data that was not available nor found at the time of the Great Old Broads for Wilderness staff visit in February 2008. The request was for a digitized map of the SPEAR county-wide ATV system. At that time, BLM staff members were not aware of such a map and could not find it in the GIS database. Since that time, contact has been made with the former BLM employee who handled GIS data in 2005. With this former employee's assistance, the BLM has the data that appears to match the GOBW request. A map depicting this data (the SPEAR Canyon Rims OHV Proposal) has been printed along with data showing the current Travel Plan, both open and closed routes. This map is available to the public, upon request, and will be provided by the Monticello Field Office to the Great Old Broads for Wilderness in the coming days.

As noted on page N-15 of Appendix N, Travel Plan, most of the roads on the SPEAR proposal are existing San Juan County roads. The SPEAR data also depicts various "connector" routes that SPEAR would like to see included in the ATV system. The BLM has made no endorsement of any of these connector routes but notes that these can be considered on a case-by-case basis. Additionally, as stated in Appendix N, the BLM will collaborate with affected and interested parties in evaluating the designated road and trail network on potential changes in the existing system including the addition of new trails that would help meet current and future demands (PRMP/FEIS at N-30).

Response to Comments from Wild Rivers Expeditions regarding Group Size

Issue Number: PP-UT-MONTICELLO-08-0019-10
Organization: Wild Rivers Expeditions
Protester: Kristen McKinnon

Issue Excerpt Text:

Given the treatment of Wild Rivers' comments to the DRMP, in addition to our conversation with the Monticello FO Area Manager in which he informed us that the comments submitted by Wild Rivers were substantive in nature and had not been included in the analysis (personal communication, Thomas Heinlein, 9/18/08), Wild Rivers believes that the criteria stated above were not used and that the presentation of this list of criteria is therefore false. A BLM staff member informed Wild Rivers that the only criteria used for separation of substantive or non-substantive is the fifth criteria listed or those comments causing "changes in or revisions to the proposed action." (personal communication, Linda Richmond, 9/12/08).

Issue Number: PP-UT-MONTICELLO-08-0019-12
Organization: Wild Rivers Expeditions
Protester: Kristen McKinnon

Issue Excerpt Text:

BLM failed to disclose and thoroughly respond to opposing views in Wild Rivers' DRMP comments regarding the purpose and need of proposed actions

to change commercial river permit stipulations and the environmental, social and economic impacts of the proposed range of alternatives and the Proposed Plan.

Issue Number: PP-UT-MONTICELLO-08-0019-5
Organization: Wild Rivers Expeditions
Protester: Kristen McKinnon

Issue Excerpt Text:

Wild Rivers' comments in the draft process were disregarded though they meet the criteria in the PRMP/FEIS defining substantive comments (included for review). Wild Rivers was informed that this was a mistake by the Monticello FO Area Manager and that our comments were indeed 'substantive' and 'should have been addressed' (personal communication, Thomas Heinlein, 9/8/08). Since that discussion, BLM staff has reported that all comments that did not require an editorial change in the document were considered opinion and "did not count" (personal communication, Linda Richmond, 9/24/08). While this creates concern for Wild Rivers in terms of the specific issues that we are protesting, it is also an offensive and illegal interpretation of the NEPA process, virtually making the public the editors of a document as opposed to accepting their input and concerns.

Issue Number: PP-UT-MONTICELLO-08-0019-19
Organization: Wild Rivers Expeditions
Protester: Kristen McKinnon

Issue Excerpt Text:

Alternative A states that, "The number of activities impacted by launch limits and trip sizes within the SRMAs would be least restricted and most similar to current conditions under Alternative A. Economic contributions from these groups would also be similar since reductions in permits would not change under Alternative A." Wild Rivers protests this statement

because it is false. The Proposed Plan does change permits and the proposed change represents at least a 20 percent reduction in potential use for all commercial river permit holders. Not only is this a significant change in the case of each permit holder as an individual, but that reduction in use would carry-over to collected fees including the percentage of profits that commercial holders pay to the BLM. As noted in the Affected Environment section in the Recreation discussion of Fee collections (3.11.2.4.3, pg 3-91),

Summary

The BLM failed to disclose and thoroughly respond to opposing views in Wild Rivers' DRMP comments regarding the purpose and need of proposed actions to change commercial river permit stipulations and the environmental, social and economic impacts of the proposed range of alternatives and the Proposed Plan.

Response

Comments from Wild Rivers Expeditions were mistakenly categorized as "non-substantive" during the comment content analysis. Further, the BLM concurs upon review that the decision to reduce group size is not supported by the analysis in the PRMP/FEIS. Therefore, this decision will be removed in the Record of Decision. In the Approved RMP, the BLM will maintain the existing decision and limit trip size to 25 people on private trips, and 25 passengers plus 8 crew members on commercial trips (as discussed in Alternative A, the No Action Alternative).

Likewise, the BLM Monticello Field Office will withdraw the proposed decision to lower the number of commercial daily launches on the San Juan River. The BLM will maintain the existing decision and allow one launch of 25 passengers and one launch of 10 passengers daily (as discussed in Alternative A, the No Action Alternative).

Limited Range of Alternatives

Issue Number: PP-UT-MONTICELLO-08-0007-16
Organization: Ecos Consulting
Protester: Charles Schelz

Issue Excerpt Text:

BLM's Monticello DRMP/DEIS fails to include a reasonable range of Alternatives. Specifically, it contains no alternative that would adequately protect the scarce riparian resources of the Monticello BLM Decision Area from Off-Highway Vehicle OHV use, livestock grazing, mineral development and associated damages from OHV routes throughout the Decision Area, as it fails to include an alternative that would protect riparian areas, wildlife habitat, and minimize fugitive dust emissions.

Issue Number: PP-UT-MONTICELLO-08-0017c-105
Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

BLM has failed to consider a no leasing alternative in the Monticello PRMP. As part of its analysis BLM must consider a no leasing alternative—in addition to a no action alternative. Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all reasonable approaches before them. See, e.g., *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). The Monticello PRMP does not analyze the possibility of a no leasing alternative. Any brief mention and rejection in the 1975 Oil and Gas Program Environmental Analysis Record (EAR) of

the no leasing alternative was facially insufficient and cannot be relied upon now for that necessary analysis. *Southern Utah Wilderness Alliance et al. v. Norton*, 457 F. Supp. 2d 1253, 1262–64 (D. Utah 2006) (explaining that such non-NEPA analyses with cursory or inadequate analysis do not satisfy BLM’s NEPA obligation); see also PRMP at 2-195 (relying on this EAR for its no leasing alternative analysis). In addition, if there were any management framework plans upon which BLM hoped to rely, these documents are not NEPA documents and thus do not constitute adequate pre-leasing analyses that consider a no leasing alternative. See *Southern Utah Wilderness Alliance et al.*, 164 IBLA 118, 123-24 (2004). Hence, the BLM has never had before it the possibility of totally abandoning oil and gas leasing in the Monticello planning area, something it is required to consider. See *Bob Marshall Alliance*, 852 F.2d at 1228.

Issue Number: PP-UT-MONTICELLO-08-0017c-106

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

The PRMP dismisses the no leasing alternative by mischaracterizing its implications and conflating it with the no action alternative. See Monticello PRMP at 2-194 to -195. The no leasing alternative does not require BLM to buy back all existing leases. See Monticello PRMP at 2-194. It simply requires that BLM analyze a program in which no future leases are offered. This is not a useless exercise; it allows BLM to compare the difference in impacts between the no leasing alternative and the development alternatives. BLM must fully analyze the no leasing alternative. The present analysis is insufficient and fails the Tenth Circuit’s “rule of reason” requirement.

Issue Number: PP-UT-MONTICELLO-08-0017c-20

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

Again we reiterate that BLM must consider a no-leasing alternative. The current draft of the RMP fails to consider such an alternative. Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all possible approaches before them.

Issue Number: PP-UT-MONTICELLO-08-0017c-88

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

Since the PRMP/FEIS Allows Grazing on an

Unreasonable Proportion of the Total Acreage Within the Monticello PA without the Requisite Environmental Analysis, the PRMP/FEIS Fails to Comply with the FLPMA Requirement for Reasoned and Informed Decision-making The PRMP/FEIS opens 1,633,253 acres within the Monticello PA to livestock grazing while closing only 128,098 acres to the activity, or 7% of the total planning area. This scant 7% raises a concern that points to the BLM’s failure to fulfill its statutory duties. When the justifications for the specific closures are analyzed, it becomes clear that a portion of the closed acreage is not due to a specific analysis of grazing impacts on other fragile resources. Table 4.51 on page 4-89 notes that some of the closures stem from inaccessibility to livestock and sparse vegetation. In addition, this table attributes some of the closed acreage to the court order in the Comb Wash decision. When these justifications are subtracted, only a portion of the 7% of acres closed to grazing results from resource conflicts and concerns. With such a minimal percentage of the planning area closed to grazing for the protection of other resources, the BLM can hardly contend that it engaged in the requisite environmental analysis under NEPA or the reasoned and informed decision-making process under FLPMA.

Issue Number: PP-UT-MONTICELLO-08-0017c-90

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

All of the alternatives listed in the PRMP/FEIS include a similar ratio of acres open to acres closed to grazing. In fact, as illustrated in Table 4.59 on page 4-108, the total acreage open to grazing in the alternatives never deviates more than 1% from the proposed plan. Since each alternative hovers near a total of 93% of the Monticello PA remaining open to grazing, the PRMP/FEIS fails to consider an adequate range of alternatives as required by NEPA. Furthermore, since the PRMP/FEIS is devoid of any assessment of relative resource values on the allotments, this blanket presumption to keep open such a large majority of the Monticello PA to grazing under every alternative violates FLPMA.

Issue Number: PP-UT-MONTICELLO-08-0018-3

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

In spite of these characteristics which combine to make the planning area unique and sensitive, there was no analysis of alternatives such as No Grazing, Significantly Reduced Grazing or closing sensitive areas such as wilderness, wilderness quality lands,

riparian areas, ACECs or areas with sensitive soils, cultural or paleontological, or wildlife resources, to livestock in spite of the documented benefits of doing so within the RMP itself. This approach with respect to livestock grazing violates the National Environmental Policy Act (NEPA), 42 V.S.C. §§ 4321-4361, requirement that federal agencies analyze a reasonable range of alternatives.

Issue Number: PP-UT-MONTICELLO-08-0018-6
Organization: Western Watersheds Project, Inc.
Protester: John G. Carter

Issue Excerpt Text:

In addition to little or no differentiation in stocking rates, there is no significant difference in the amount of acres of public lands the BLM considered leaving open, or available, for grazing. All alternatives continued the status quo of maintaining over 98% of the land open to grazing by livestock. In doing so, BLM has failed to resolve livestock conflicts with low-impact recreation, fish and wildlife, erodible soils, biological crusts and other resources by including meaningful alternatives to protect these important resources. This is unreasonable. NEPA requires that all alternatives must be reasonable. See 40 C.F.R. §§ 1502.14 (EISs must "[r]igorously explore and objectively evaluate all reasonable alternatives") (emphasis added); 1508.25 (scope of alternatives considered in an EIS must consist of "reasonable courses of actions").

Issue Number: PP-UT-MONTICELLO-08-0018-8
Organization: Western Watersheds Project, Inc.
Protester: John G. Carter

Issue Excerpt Text:

BLM eliminated consideration of a No Grazing Alternative using arguments of multiple use and sustained yield and the Taylor Grazing Act. However, BLM is not obligated to continue authorizing uses which degrade resources and create conflicts, such as livestock grazing. A recent decision by Interior Board of Land Appeals, Department of Hearing and Appeals³, cited *NWF v. Bolten Ranch, Inc.*⁴, stating, "The Secretary of the Interior is not limited by 43 CFR 4113.1 in determining whether to renew a grazing license. The secretary or his delegate is not obligated to issue a license or permit to an applicant. The issuance of such permits or licenses is committed to agency discretion." Merely analyzing a No Action Alternative does not provide an adequate baseline with which to compare direct, indirect or cumulative impacts. Through its analysis, BLM has accepted the status quo as its baseline, therefore burying the impacts occurring under the current land use plans for the past two decades and now adding the impacts of its proposed action as if past impacts did not occur. BLM's own analysis refutes its position by documenting in the PRMP that, "...there are 1,633,253 BLM acres (93%) available for grazing and 128,098 BLM acres (7%) unavailable for livestock grazing for resource protection." (PRMP page 3-50) The facts that 128,000 acres are already unavailable to grazing, that allotments or portions of allotments have been closed or are proposed for closure is stark testimony that BLM has the authority to close the entire planning area to protect resources and is not prevented from doing so. (Table 2.1)

Summary

The DEIS/FEIS does not provide an adequate range of alternatives with respect to livestock grazing. The acreage open to grazing is the same for all alternatives. There is no alternative which considers "no grazing" or closing sensitive areas to grazing. The DEIS/FEIS does not provide an adequate range of alternatives with respect to oil and gas leasing. The acreage open to development is virtually identical for all alternatives. There is no alternative which would provide for the protection of riparian areas from impacts due to grazing, mineral development, and OHV use.

Response

The BLM considered a reasonable range of alternatives in the PRMP/FEIS in full compliance with the NEPA. The CEQ regulations (40 CFR § 1502.1) require that the BLM consider reasonable alternatives, which would avoid or minimize adverse impacts or enhance the quality of the human environment. While there are many possible alternatives or actions, the BLM used the scoping process to determine a reasonable range of alternatives. As a result, five alternatives

were analyzed in detail in the PRMP/FEIS that best addressed the issues and the concerns identified by the affected public.

The BLM's range of alternatives represented the full spectrum of options including a no action alternative (Alternative A); an alternative emphasizing conservation and constraints to resource use (Alternative B); a Proposed Plan (formerly Alternative C); an alternative emphasizing resource use (Alternative D) that increases conservation of resources compared to current management and emphasizes moderate constraints on leasing for oil and gas and other (leasable) solid minerals, and an alternative that would emphasize the protection of wilderness characteristics on those lands found to possess such characteristics (Alternative E). While the acreage open or closed to various resource uses is similar for each alternative, the level of constraints varies greatly between alternatives. The management strategies considered a range from increased conservation and protection of natural, recreation, and cultural values and intensive management of surface-disturbing activities to an alternative focused on energy and commodity development with the least protective management actions for physical, biological, and heritage resources.

The BLM acknowledges that there could be a large number of variations to alternatives put forth in the Monticello planning process. However the BLM is not required to analyze in detail each variation, including those determined not to meet the RMP's purpose and need, or those determined to be unreasonable given the BLM's mandates provided by the FLPMA and other Federal laws and regulations applicable to public lands and the policies and programs implemented pursuant to those mandates. The CEQ explained the issue of the necessary range of alternatives as follows: "For some proposals there may be a very large or even an infinite number of reasonable alternatives... When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS" (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,031 (March 23, 1981)). Each of the alternatives considered and analyzed in detail achieves the purpose and need for the plan, is implementable, and addresses all significant issues. The BLM's Proposed Plan is the result of a broad range of analysis and public input and represents a balanced, multiple use management strategy that both protects resources and allows for commodity uses.

A detailed rationale was also provided for the alternatives and management options considered but eliminated from detailed analyses in Section 2.3 (PRMP/FEIS at 2-193 to 2-196). As described in Sections 2.3.1, 2.3.2, 2.3.4, and 2.3.5, alternatives closing the planning area to all grazing, adjustments to livestock use, elimination of OHV use, or all oil and gas leasing were not considered in detail because they would not meet the purpose and need of the PRMP/FEIS. With regard to livestock grazing, during the scoping process, all grazing allotments were reviewed against the factors specified in the Planning Handbook (H-1601-1). These criteria aided the BLM in identifying lands as available or not available for livestock grazing (43 CFR 4130.2(a)). Substantial conflicts were identified on several allotments, totaling 134,277 acres, which led to the decisions in the PRMP/FEIS to close these allotments to grazing. In addition, portions of other allotments were closed to grazing (with no loss of AUMs) to address resource issues such as riparian, recreation, and soils resources (PRMP/FEIS at 2-22 through 2-23). Decisions regarding authorized livestock use levels and the terms and conditions under which they are managed is an implementation decision (H-1610-1, Appendix C, page 15). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data

on a periodic basis, normally on an allotment and/or watershed basis. After NEPA analysis, changes to livestock management deemed necessary to meet or progress toward meeting management objectives and to conform to Utah's *Guidelines for Grazing Management* are implemented through a formal decision-making process in accordance with 43 CFR 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance rangeland health.

As cited in Section 2.3.4, the BLM is aware that a "No-Leasing Alternative" in an RMP revision is actually an action alternative because where lands have already been leased, the no-action for NEPA purposes continues to allow for (honor) valid existing rights. The "buy-back" of existing leases was considered as only one potential feature of a "no-leasing" alternative, not necessarily the defining feature.

With regard to oil and gas leasing, a "No-Leasing Alternative" was not considered because it would not have met the purpose and need for the RMP and would be necessary only if other constraints and management actions, including no-surface-occupancy, are insufficient to resolve issues or conflicts raised during scoping. The Draft RMP/EIS analyzed various categories of decisions, including no leasing of certain areas throughout the planning area. However, an alternative that considered complete elimination of mineral leasing was not necessary to resolve issues related to protection of competing resource values and uses and it would unnecessarily restrict mineral exploration and production on the public lands. The proposed oil and gas leasing categories, associated lease stipulations, and best management practices identified in Appendix A would sufficiently address issues or conflicts raised during scoping and address adequate mitigation of competing resource values and uses.

In addition, it is contrary to the Mineral Leasing Act, as amended, and the BLM's current policy of making lands available for fluid mineral leasing while applying the least restrictive management constraints necessary to achieve resource goals and objectives.

With regard to an alternative that would protect riparian and other sensitive areas: many of the management prescriptions in the resource-protection alternative, Alternative B, as well as Alternative E, would maximize protection of riparian and other sensitive areas within the constraints of the purpose and need outlined for the RMP. The BLM's proposed plan includes actions intended to provide protection of riparian areas (PRMP/FEIS at 2-47 to 2-48), as well as the management prescriptions for other resources and uses. The BLM intends to manage riparian areas for properly functioning condition to minimize or avoid disturbance causing a loss or degradation of these resources.

Vegetation Treatment Descriptions

Issue Number: PP-UT-MONTICELLO-08-0018-14

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

Vegetation Restoration Treatments. The PRMP (Tables 2.1 and 2.2) show that between 841,938 and 1,309,894 acres are open to woodland harvest and fuels treatments. Vegetation treatments range from 15,475 acres per year to 9,300 acres per year, or a total of 309,500 to 186,000 acres over the planning period of 20 years. Fire management would

conducted on 5,000 to 10,000 acres per year or 100,000 to 200,000 acres over the planning period. There were no alternatives describing significantly different levels of vegetation treatments, removing livestock grazing and other surface disturbing activities to accelerate restoration or protecting sensitive areas, including restoring balance to plant communities through rest which has been shown to be a cost-effective means of restoration.

Response

The BLM considered a reasonable range of alternative with respect to vegetation treatments as required by CEQ regulations (40 CFR § 1502.1). The BLM designed the alternatives to provide the maximum flexibility in performing vegetation treatments to achieve specific goals and desired outcomes such as a mixture of vegetative types: eliminating noxious weeds and/or non-native invasive plant species; restoring and maintaining healthy functioning landscapes, habitats and riparian areas to benefit wildlife such as sage-grouse, and other special status species; and achieving rangeland health objectives. Variations in the alternatives consist of vegetation treatment methods (prescribed fire, mechanical, chemical biological, woodland product removal and wildland fire use) and areas to be treated. This is discussed in detail at page 2-79 and 2-80.

Public Opportunities to Comment

Issue Number: PP-UT-MONTICELLO-08-0018-65

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

Consultation must occur before a decision is made and any modifications of the selected alternative must be disclosed to the public and the public given an opportunity to comment on the modifications, in accordance with NEPA. At a minimum, the biological assessments and biological opinion(s) should have been made available to the public in the Final EIS so that the public could review and provide comments on them. See 40 C.F.R. § 1502.25(a). The U.S. Fish and Wildlife Service (FWS) will not be able to make a no jeopardy determination, because the RMP does not contain any standards.

Response

The BLM is in full compliance with Section 7 of the ESA and CEQ regulations (40 CFR § 1502.25). The FWS is responsible for the administration of the provisions of the ESA. Section 7(a)(2) of the ESA requires Federal agencies to consult with the FWS to ensure that its actions are not likely to jeopardize the continued existence of any listed species or adversely modify critical habitat. As presented in Sections 5.2.5.1, the BLM consulted with the FWS. As part of the formal consultation process, a biological assessment was prepared, based on the proposed RMP, and was provided to FWS for review and comment. Pursuant to regulations governing Section 7 consultation, no public comments were solicited on the biological assessment. However, the BLM used the same information and biological data to prepare the biological assessment as was contained in the environmental impact statement pertaining to the environmental consequences of the proposed action on endangered species.

The Biological Opinion is the formal opinion of the FWS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The BLM has completed Section 7 consultation with the FWS, and has received a Biological Opinion which concludes that implementation of the plan will not be likely to jeopardize the continued existence of any listed species. A copy of the Biological Opinion will be included in the Record of Decision.

Deferral of Analysis

Issue Number: PP-UT-MONTICELLO-08-0017c-56

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

BLM did not assess cumulative impacts stemming from the issuance of SRPs; this renders the analysis incomplete. The PRMP states that “[t]he issuance of a SRP is a site-specific implementation level authorization.” BLM Response to Comment No. 26-86. However, site-specific projects will tier to the NEPA analysis performed in the RMP and thus will never be fully analyzed. The possibility of future analysis does not justify BLM avoiding an assessment of the potential environmental consequences of the action that it is approving in the RMP. As a matter of NEPA policy, compliance with the Act must occur “before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). For purposes of NEPA compliance, “it is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now.” *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2002).

Issue Number: PP-UT-MONTICELLO-08-0017c-57

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

depending solely on site-specific analysis does not allow for cumulative impact analysis as required by NEPA.

Issue Number: PP-UT-MONTICELLO-08-0019-19

Organization: Wild Rivers Expeditions

Protester: Kristen McKinnon

Issue Excerpt Text:

Alternative A states that, “The number of activities impacted by launch limits and trip sizes within the SRMAs would be least restricted and most similar to current conditions under Alternative A. Economic contributions from these groups would also be similar since reductions in permits would not change under Alternative A.” Wild Rivers protests this statement because it is false. The Proposed Plan does change permits and the proposed change represents at least a 20 percent reduction in potential use for all commercial river permit holders. Not only is this a significant change in the case of each permit holder as an individual, but that reduction in use would carry-over to collected fees including the percentage of profits that commercial holders pay to the BLM. As noted in the Affected Environment section in the Recreation discussion of Fee collections (3.11.2.4.3, pg 3-91).

Summary

BLM did not assess cumulative impacts stemming from the issuance of Special recreation Permits (SRPs); this renders the analysis incomplete. Depending solely on site-specific analysis does not allow for cumulative impact analysis as required by NEPA

Response

The issuance of a SRP is a site-specific implementation level authorization, which requires full compliance with NEPA, including analyzing the direct, indirect and cumulative impacts associated with each proposal. The scope and nature of the specific proposed action drives the level of analysis that must be conducted to comply with the requirements of NEPA. As noted above, Resource Management Plans are used to evaluate broad policies and plans and provide an analytical foundation for subsequent project-specific NEPA documents. The cumulative analysis in the PRMP/FEIS considered the present effects of past actions, to the extent that they are relevant, and present and reasonably foreseeable (not highly speculative) federal and non-federal actions, taking into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The BLM has fully complied with the requirements of 40 CFR § 1508.7 and

prepared a cumulative analysis to the extent possible based on the broad nature and scope of the proposed management options under consideration.

Analysis of the Indirect and Cumulative Impacts from Off-Highway Vehicles

Issue Number: PP-UT-MONTICELLO-08-0017b-44

Organization: Southern Utah Wilderness Alliance

Issue Excerpt Text:

The PRMP fails to adequately analyze and inform the public and the decision-maker as to the potential indirect and cumulative impacts to the natural and cultural resources from the ORV area and route designations and travel decisions. See e.g. PRMP at 4-773 (no discussion of ORV designations or ORV use in the air quality cumulative impacts analysis); 4-781 (general statement that removing ORV open areas would be beneficial to riparian areas); 4-782 (general statement that past and present OHV use affects soil and water resources); 4-786 (general statement that past and present OHV use affects vegetation resources); 4-774 (“the advent of the Internet” combined with “substantial increase in OHV ownership and recreation use will continue to subject cultural resources in the region to heightened risk of damage, vandalism, and/or looting.”); 4-786 (general statement that the Proposed plan could have adverse impact on visual resources); 4-445 (no discussion of cumulative impacts of ORV designations or ORV use on special status species); 4-446 (no discussion of ORV designations or ORV use in wildlife cumulative impacts analysis); 4-778 (“[m]ajor contributors to detrimental impacts [to non-WSA lands with wilderness characteristics] include OHV activities.”); 4-4-779 (conclusory statement that “OHV travel management would have beneficial cumulative effects on recreational experience and resources by reducing surface impacts to soils, cultural resources, riparian areas and wildlife habitat by generally confining travel to designated routes.”); 4-784 (general statement that the PRMP would “contribute no adverse cumulative impacts to WSAs). Clearly these statements, or lack thereof, fail to adequately analyze and assess the cumulative impacts that the ORV designations and the dense network of proposed routes have on wildlife, soils, vegetation, riparian areas, air and water quality, WSAs, non-WSAs with wilderness character lands, visual and cultural resources, and other users, when taken in combination with other past, present and reasonably foreseeable actions, including oil and gas development, vegetation treatments, grazing, and climate change. BLM must supplement the PRMP and provide an unbiased, scientific and quantitative analysis of the cumulative and indirect impacts of the ORV designations and transportation decisions, and provide the public a chance to review and comment on the supplemental information before a decision is issued that could significantly affect the very resources BLM is entrusted to protect.

Response

The Monticello PRMP/FEIS complies with NEPA in analyzing and disclosing the environmental impacts for the proposed plan. In Chapter 4 of the PRMP/FEIS, the BLM has provided an adequate and reasonable analysis that leads to a logical conclusion of the potential environmental consequences of the proposed plan and other alternatives (PRMP/FEIS at 4-1 to 4-787). 40 CFR § 1502.16 requires a discussion of "the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented." Protesters express specific concerns relating to the BLM's impact analysis regarding the cumulative impacts of OHV use to a variety of resources. The discussion of direct and indirect effects in the PRMP/FEIS addresses these points. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The cumulative impacts of various uses, including OHV use, are described in Section 4.4 of the PRMP/FEIS at a level of detail appropriate to a landscape-level document.

FLPMA

The Unnecessary and Undue Degradation Standard

Issue Number: PP-UT-MONTICELLO-08-0017a-87

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The Monticello PRMP transportation decisions and ORV area and trail designations of 2,820 miles of route, including 262 miles of route in agency-identified, non-WSA lands with wilderness character, and approximately 19 miles of route in WSAs, and the 300-foot wide, cross-country corridor along designated routes to access dispersed camping, fail FLPMA's UUD standard. See PRMP at ES-5, 2-115, 4-243, 4-253, and -254.¹⁴ The proposed transportation decisions and ORV designations will harm natural and cultural resources in a number of important ways, including: unnecessarily increasing fugitive dust and degrading air quality; unnecessarily damaging soils and vegetation and increasing the threat of non-native plant species; unnecessarily fragmenting wildlife habitat; causing unnecessary

damage to riparian areas, floodplains, and cultural resources; unnecessarily reducing naturalness in areas with identified wilderness characteristics; and impairing Wilderness Study Areas.¹⁵ (Elsewhere in this protest, we discuss the failings of the PRMP to consider how the proposed actions will exacerbate, and contribute to, the effects of climate change as well.)

Issue Number: PP-UT-MONTICELLO-08-0018-55

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

There is no disclosure of criteria, no baseline analysis, nor a determination of which acres are capable and suitable for livestock grazing. Without this information, the BLM cannot claim that it has made an informed decision in the RMP and the agency ignores the multiple use and unnecessary and undue degradation mandates of FLPMA.

Summary

Decisions related to OHV use and livestock grazing would cause unnecessary and undue degradation.

Response

The BLM analyzed the impacts of grazing and travel management as outlined and described in Chapter 4 of the PRMP/FEIS. Congress recognized that through the BLM's multiple-use mandate, there would be conflicting uses and impacts on the public land. Unnecessary and undue degradation is a management standard that does not apply to BLM management decisions for public lands.

Federal Land Policy and Management Act's Withdrawal of Lands

Issue Number: PP-UT-MONTICELLO-08-0010-30

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

If the BLM retains wilderness-like protections for non- WSAs with wilderness characteristics in the Record of Decision, despite their violation of FLPMA, the 1964 Wilderness Act, and the Utah v. Norton Settlement Agreement, a formal withdrawal process is necessary because of the closure to oil and gas leasing. The FLPMA defines a withdrawal as

"withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws. ..." 43 U.S.C. § 1702(j). For tracts of lands greater than 5,000 acres, the Interior Secretary must provide Congress a variety of information in order to fully disclose the closure's impacts, costs, and need so that Congress can decide whether to disapprove the withdrawal. A withdrawal also requires public notice and hearing, and consultation with state and local governments. 43 U.S.C. at § 1714(c)(1)-(12), (h); 43 C.F.R. Parts 2300, 2310. By proposing 88,871 acres of land in the

non- WSA areas with wilderness characteristics, the BLM must comply with the formal withdrawal process.

Issue Number: PP-UT-MONTICELLO-08-0010-31
Organization: San Juan County
Protester: Bruce B. Adams

Issue Excerpt Text:

By a 2006 Directive from the BLM Director, the BLM cannot effect a de facto closure of thousands of acres of public lands to oil and gas leasing without following FLPMA's Section 204 withdrawal procedures: "Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310." BLM Energy and Non-Energy Mineral Policy (April 21, 2006). The BLM formally adopted this policy through 1M 2006-197. Consequently, the 2006 Energy and Non-Energy Mineral Policy with which the BLM must comply, conditions the closure of lands available to mineral exploration and development on FLPMA's withdrawal procedures.

Issue Number: PP-UT-MONTICELLO-08-0011-22
Organization: IPAMS
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

If the BLM retains wilderness-like protections for non-WSAs with wilderness characteristics in the Record of Decision, despite their violation of FLPMA, the 1964 Wilderness Act, and the Utah v. Norton Settlement Agreement, a formal withdrawal process is necessary because of the closure to oil and gas leasing. The FLPMA defines a withdrawal as "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws..." 43 USC § 1702. For tracts of lands greater than 5,000 acres, the Interior Secretary must provide Congress a variety of information in order to fully disclose the closure's impacts, costs, and need so that Congress can decide whether to disapprove the withdrawal. A withdrawal also requires public notice and hearing, and consultation with state and local governments. 43 U.S.C. at § 1714(c)(1)-(12), (h); 43 C.F.R. Parts 2300, 2310. By proposing 99,458 acres of land in the non-WSA areas with wilderness characteristics except White River, the BLM must comply with the formal withdrawal process.

Summary

Decisions removing lands from mineral leasing are withdrawals. Establishing withdrawals of more than 5,000 acres is contrary to law and Secretarial policy.

Response

The Monticello RMP closed approximately 493,400 acres to oil and gas leasing, of which 101,800 acres are outside Wilderness or Wilderness Study Areas. Those 101,800 acres are closed to oil and gas leasing because the Monticello Field Office determined that it is not reasonable to apply a no surface occupancy (NSO) stipulation, particularly in areas where the oil and gas resources are physically inaccessible by current directional drilling technology from outside the boundaries of the NSO areas.

The FLPMA withdrawal language cited by Independent Petroleum Association of Mountain States (IPAMS) does not apply to those 101,800 acres outside Wilderness or WSAs. Withdrawals are defined by FLPMA § 103(j) as follows:

the term 'withdrawal' means *withholding an area of Federal land from settlement, sale, location, or entry*, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. § 1702(j) (emphasis added). The terms “settlement,” “sale,” “location,” or “entry” are all terms contemplating transfer of title to the lands in question, particularly the patenting, or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land law. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920 (MLA). A Federal mineral lease sale is not a “sale” of public land under Section 203 of FLPMA, and a closure to leasing is not a “withdrawal” as described in Section 204 of FLPMA. Therefore, the BLM was not required to complete the procedures associated with a withdrawal when it decided to close the 101,800 acres in the Monticello planning area to oil and gas leasing in the Monticello PRMP/FEIS.

Identification of Lands Suitable for Grazing

Issue Number: PP-UT-MONTICELLO-08-0018-26
Organization: Western Watersheds Project, Inc.
Protester: John G. Carter

Issue Excerpt Text:

The BLM fails to disclose its assessment and inventory of acres suitable for livestock grazing. As was true with the Draft, the PRMP/FEIS fails to disclose BLM's criteria for its assessment of acres to be made available or not available for livestock grazing. In its comments on the Draft RMP JEIS, WWP pointed out the requirements in BLM's Land Use Planning Handbook (H-1601-1) Appendix C which requires that BLM "Identify lands available or not available for livestock grazing (see 43 CFR 4130.2(a)), considering the following factors: 1. Other uses for the land; 2. terrain characteristics; 3. soil, vegetation, and watershed characteristics; 4. the presence of undesirable vegetation, including significant invasive weed infestations; and 5. the presence of other resources that may require special

management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs." The RMP does not provide this analysis while making 93% of the planning area available to livestock.

Issue Number: PP-UT-MONTICELLO-08-0018-54
Organization: Western Watersheds Project, Inc.
Protester: John G. Carter

Issue Excerpt Text:

The RMP does not explain how authorizing grazing at the same levels and same locations as currently allowed complies with this multiple use mandate and considers competing values. Overwhelming scientific evidence points to livestock grazing as extremely environmentally destructive. Grazing cannot cause significant environmental degradation at the same time that it results in restoration, protection, or enhancement of the environment. This is not a reasoned decision.

Summary

The PRMP/FEIS fails to disclose the BLM's criteria for its assessment of acres to be made available or not available for livestock grazing.

Response

The FLPMA makes it clear that the term “multiple use” means that the Secretary can make the most judicious use of the land for some or all of the resource uses. During the scoping process, all grazing allotments were reviewed against the factors specified in the Planning Handbook (H-1601-1). These criteria aided the BLM in identifying lands as available or not available for livestock grazing (43 CFR § 4130.2(a)). Substantial resource conflicts were identified in the planning area, which led to the decision to continue to make livestock grazing unavailable on a total of 134,277 acres (PRMP/FEIS at 2-22 and 2-23 provides a list of areas unavailable to livestock grazing under the PRMP). The list reflects the BLM’s consideration of these resource conflicts. For instance, grazing is not authorized near relict vegetation in the Lavender Mesa

area, within the Pearson Canyon hiking area boundary, in wildlife habitat in parts of the slopes of Peter's Canyon and East Canyon, and in developed recreation sites. Appendix D of the PRMP/FEIS also details the BLM's consideration of allotment usage.

The BLM also has sufficient latitude for periodic adjustments of a particular use. For lands deemed available for grazing under a land use plan, it is the BLM's policy, regarding the adjustments to the authorized levels of livestock use, to monitor and inventory range conditions under existing stocking levels and make adjustments, as necessary based on the collected data, to ensure that Standards for Rangeland Health and resource objectives are met. Grazing issues will continue to be addressed on a site-specific basis in compliance with the Standards for Rangeland Health and Guidelines for Grazing Management. Therefore, the BLM appropriately applied its land use planning policy and is in full compliance with FLPMA's principle of multiple use.

Areas of Critical Environmental Concern

Areas of Critical Environmental Concern Designation Priority

Issue Number: PP-UT-MONTICELLO-08-0017a-34

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In essence, FLPMA directs BLM to prioritize protection and designation of ACECs across all alternatives under consideration, not simply the "conservation" alternative. In the Monticello PRMP, BLM has neither recognized nor carried out this statutory mandate. To resolve this, once BLM has determined that certain areas in the Monticello Field Office contain the requisite relevant and important values (R and I values) and that the PRMP does not protect all of the R and I values—which the Monticello Field Office has already done—the agency must give priority to the designation of those areas as ACECs over other competing resource uses and likewise give priority to the protection of those areas over other competing resource uses. BLM has

violated FLPMA by failing to give priority to the designation and protection of ACECs.

Issue Number: PP-UT-MONTICELLO-08-0017a-38

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Areas with R and I values that are jeopardized by oil and gas drilling and/or ORV use should be designated as ACECs and provided with protective management prescriptions that would include road closures, restoration, and closure to oil and gas development, and/or application of best management practices where lands are already leased (such as no surface occupancy stipulations and timing limitations, which can be imposed by the agency and/or negotiated with leaseholders). Without these protections, BLM violates FLPMA's mandate to prioritize the designation and protection of ACECs and their identified R and I values.

Summary

The FLPMA requires that the BLM "give priority to the designation and protection" of ACECs. The number/size of ACECs designated in this plan does not fulfill this mandate.

Response

A comparison of estimated effects and trade-offs associated with the alternative led to the development and selection of the preferred alternative. There is no requirement to carry forward all of the potential ACECs into the preferred alternative. The rationale for designation of individual ACECs carried forward into the proposed plan will be provided in the ROD.

Should the BLM choose not to designate potential ACECs, BLM Manual 1613 .33E provides direction in this process. The Manual only requires that all potential ACECs be carried forward as recommended for designation into at least one alternative in the DRMP/DEIS. Alternative B analyzed the designation of all potential ACECs. The BLM Manual 1613.23 states that "After completing the analysis of the effects of each alternative, the manager selects the preferred plan alternative which best meets the planning criteria and the guidance applicable to the area. The preferred alternative reflects the BLM's proposal for designation and management of ACECs." The BLM has discretion regarding the formation and management of ACECs.

Areas of Critical Environmental Concern within Wilderness Study Areas

Issue Number: PP-UT-MONTICELLO-08-0017a-40

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In addition to conflicting with the directives of FLPMA regarding ACECs and the IMP, BLM's approach is also belied by the BLM's answer to San Juan County's formal comment that it is "opposed to 'layering' or the establishment of ACECs or SRMAs over WSAs and Wild and Scenic Rivers." To which the BLM responds, appropriately: "Layering" is planning. Under FLPMA's multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, BLM doesn't necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as "layering". BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends upon a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but is required by the FLPMA and National BLM planning and program specific regulations." FLPMA directs BLM to manage public lands for multiple use and sustained yield (Section 102(a)(7)). As a multiple-use agency, the BLM is required to implement laws, regulations and policies for many different and often competing land uses and to resolve conflicts and prescribe land uses through its land use plans. BLM's Land Use Planning Handbook requires that specific decisions be made for each resource and use (Planning Handbook "H-1601-1"). Specific decisions must be included in each of the alternatives analyzed during development of the land use plan. As each alternative is formulated, each program decision is overlaid with other program decisions and inconsistent decisions are identified and modified so that ultimately a compatible mix of uses and management prescriptions result. PRMP Response to Comments, at 7-48. SUWA cannot make this argument any better than BLM does in the preceding paragraphs because BLM clarifies that different designations serve different purposes, and that designations are limited to protect only those values relevant to those particular designations. Therefore, the fact that an ACEC lies within a WSA cannot serve as a justification for failing to designate the ACEC. Similarly, other provisions of FLPMA, the NHPA, SRMAs, and other management prescriptions and regulations do not necessarily protect the R&I values of ACECs. SRMAs are designated to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc., and have nothing to do with protecting R and I values of potential ACECs. (fnote 4) BLM should implement the management prescriptions described in SUWA's proposed Red Rock Heritage Plan, submitted with SUWA's comments on the DRMP R and I values of potential ACECs. The NHPA deals only with cultural resources, and applies different management prescriptions than ACECs. Therefore, BLM's assertions that other designations, such as the NHPA, WSAs, and SRMAs, adequately protect R and I values of potential ACECs is not true, and BLM must designate all of the potential ACECs in order to adequately protect their R and I values.

Response

The BLM agrees that management under the Interim Management Policy For Lands Under Wilderness Review (IMP) does not necessarily protect the relevant and important values associated with a potential ACEC. As discussed in the response to comments on the DRMP/DEIS, the BLM used separate policies and guidelines, as well as criteria, for establishing and managing ACECs and WSAs. These differing criteria made it possible that the same lands could qualify as both an ACEC and a WSA but for different reasons. The BLM is required to consider these different policies.

The values protected by WSA management prescriptions do not necessarily protect those values found relevant and important in ACEC evaluation, and vice versa. The relevant and important values of ACECs within or adjacent to WSAs were noted in the ACEC Evaluation. The potential ACECs are evaluated and ranked based on the presence or absence of the identified relevant and important values. These relevant and important values do not include wilderness characteristics. Additionally, the management prescriptions for the ACECs are limited in scope to protect the relevant and important values.

It is possible that certain relevant and important values can be protected by the IMP. Where proposed ACECs fall within WSAs and the management under the IMP has been deemed sufficient to protect the relevant and important values, then it is not necessary to designate the area as an ACEC, as current management prescriptions are sufficient to protect those values.

As described in Chapter 2 of the PRMP/FEIS (at 2-45), should any WSA, in whole or in part, be released from wilderness consideration, such released lands will be managed to protect relevant and important values until a plan amendment is completed, unless otherwise specified by Congress in its releasing legislation. The BLM will examine proposals in the released areas on a case-by-case basis but will defer all actions that are inconsistent with RMP goals, objectives, and prescriptions until it completes a land use plan amendment. Because any released lands will continue to be managed consistent with the prescriptions identified in this plan unless and until the plan is amended, the relevant and important values will continue to be protected regardless of whether these lands are within the WSA or not.

Compliance with the Areas of Critical Environmental Concern Manual

Issue Number: PP-UT-MONTICELLO-08-0017a-44

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

NEPA and the BLM ACEC Manual require that BLM fully disclose, summarize, and circulate for public review and comment (i.e. before the ROD is issued), all data and information that it used to determine eligibility and suitability. BLM Manual § 1613.31 to .33; 42 U.S.C. § 4321 et seq.; *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349; *Inland Empire Public Lands Council v. U.S. Forest Service*, 88 F.3d 754, 757 (9th Cir. 1996). The BLM ACEC Manual requires that the rationale for ACEC designations must be discussed. BLM Manual § 1613.33(E). However, BLM's reasoning for determining whether to propose a potential ACEC is obscured. The PRMP does not explain what weight BLM gave to the different R and I values or why it determined to propose certain potential ACECs but not others, even when potential units possessed comparable R and I values. Compare, e.g., *Butler Wash Potential ACEC* with *Indian Creek Proposed ACEC*. To present high-quality information, as required by NEPA and the BLM Manual, the PRMP should clearly indicate the weight given to the different factors and values in the ACEC

determination process, and should likewise explain and the justifications for recommending certain areas as proposed ACECs, but not others. BLM Manual § 1613.31 to .33; 40 C.F.R. § 1500.1(b).

Response

BLM Manual 1613, Areas of Critical Environmental Concern, requires the BLM to disclose the rationale for ACEC designations brought forward into the proposed plan and analysis for the BLM's decision to not designate other potential ACECs. This rationale will be fully discussed in the Monticello ROD.

Chapter 4 of the PRMP/FEIS provides an initial analysis of the areas in question: Alkali Ridge potential ACEC (at 4-485 to 4-489); Bridger Jack Mesa potential ACEC (at 4-489 to 4-490); Butler Wash North potential ACEC (at 4-490 to 4-491), Cedar Mesa ACEC (at 4-491 to 4-494), Dark Canyon ACEC (at 4-494 to 4-496), Hovenweep ACEC (at 4-496 to 4-498), Indian Creek potential ACEC (at 4-498 to 4-499), Lockhart Basin potential ACEC (at 4-499 to 4-500), Lavender Mesa ACEC (at 4-501 to 4-502), Shay Canyon ACEC (at 4-502 to 4-504), San Juan River potential ACEC (at 4-504 to 4-506), Scenic Highway potential ACEC (at 4-506 to 4-507), and Valley of the Gods potential ACEC (at 4-507 to 4-509).

Designation of the Cedar Mesa, Dark Canyon and Butler Wash Areas

Issue Number: PP-UT-MONTICELLO-08-0003-4
Protester: Patty McCourt

Issue Excerpt Text:

I am writing in response to Monticello, Utah's RMP. It proposes to change the designation of areas (Cedar Mesa, Dark Canyon and Butler wash) containing Anasazi artifacts and ruins from "area of critical environmental concern" to "special recreation management area." Since the former designation is appropriate for protection of important cultural and historic sites and the latter designation is applied to areas where outdoor recreation is high priority, it would seem obvious that the former designation is appropriate for the above listed areas.

Issue Number: PP-UT-MONTICELLO-08-0006-13
Protester: Owen Severance

Issue Excerpt Text:

In several instances, the "Special Recreation Management Area" (SRMA) designation is used instead of the mandated ACEC designation. The replacement of the statutory ACEC designation with the non-statutory SRMA designation violates the intent expressed in BLM Manual 1613.

Issue Number: PP-UT-MONTICELLO-08-0006-14
Protester: Owen Severance

Issue Excerpt Text:

The 1991 RMP established the Cedar Mesa ACEC as

part of a larger SRMA "to protect cultural resources, scenic values, and natural values associated with primitive recreation" (1991 RMP, p. 87). The existing ACEC was determined to meet the requirements for designation in the proposed RMP (Appendix H, pp. H-10 to H-15). However, the proposed RMP drops the ACEC designation in favor of an SRMA designation. This violates the requirements of BLM Manual 1613.5 to make the ACEC designation the "principal" designation. The extensive "special management" requirements are listed on pages 2-27 to 2-29 and 2-32 to 2-39. The 295,336 acre Cedar Mesa ACEC established in the 1991 RMP should be included in the approved RMP.

Issue Number: PP-UT-MONTICELLO-08-0015-4
Organization: National Trust for Historic Preservation
Protester: Ti Mays

Issue Excerpt Text:

The Proposed RMP violates FLPMA because BLM failed to prioritize ACEC designation for Cedar Mesa, an area "of regional, national, and worldwide significance because of the wealth of intact Basketmaker and Pueblo cliff dwellings in excellent condition." BLM, Proposed RMP and Final EIS, Monticello Field Office 3-144 (August 2008) [hereinafter Proposed RMP]. Under FLPMA, BLM must "give priority to the designation of. . . [ACECs]" during the land use planning process. 43 U.S.C. § 1712(c) (3). Congress defined ACECs in

FLPMA as "areas within the public lands where special management attention is required. . . to protect and prevent irreparable damage to important historic, cultural, or scenic values. . ." Id. § 1702(a). Through the planning process, BLM has an affirmative obligation to identify and prioritize designation for those areas that require "special management attention" due to the presence of relevant and important values. 43 C.F.R. § 1610.7-2. For the reasons set forth below, BLM violated this requirement for Cedar Mesa. [(1) WSA and SRMA designations do not protect and prevent irreparable damage to the cultural values of the Potential Cedar Mesa ACEC]

Issue Number: PP-UT-MONTICELLO-08-0015-8

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

Finally, the decision to not designate the Potential Cedar Mesa ACEC is inconsistent with the "layering" of land use designations in RMPs, an approach expressly endorsed by BLM in the Proposed RMP. According to BLM, "layering" is a planning tool involving the application of "many individual programs, goals, objectives, and actions to the same area of public lands. . . ." Comments of the Draft RMP/EIS by Commenter Type at 140. Here, BLM's decision concerning Cedar Mesa is inconsistent with the "layering" approach because ACEC designation would not prevent BLM from furthering or achieving the goals and objectives of the WSA designations. See Id. (layering not appropriate when leading to "inconsistent goals and objectives"), In fact, in at least one other instance, the Proposed RMP designated ACECs for an area also subject to a WSA designation, Compare Id. at Map 2-49 with Id. at Map 3-28. Thus, BLM erred in not layering the ACEC designation with the WSA and SRMA designations.

Issue Number: PP-UT-MONTICELLO-08-0017a-48

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Special management attention is required to focus on

protection of cultural values. The outstanding nature of these values is precisely what Congress intended in FLPMA when it charged the BLM to give priority to ACEC designation to give focus and intent to the management of those resources. Instead, the BLM incredibly proposes that "no special management prescription would be implemented to protect the R and I cultural and scenic values." PRMP at 4-494. The BLM proposes that managing for recreation under the prescriptions of a SRMA, coupled with certain acres being managed to IMP standard, will adequately protect the R and I values. PRMP at 2-53. The SRMA management "focus would be on providing outstanding recreation opportunities while protecting natural and cultural resource values." PRMP at 4-494. This management strategy is exactly backwards, because the protection of values is now explicitly subordinate to the primary management thrust of providing recreation opportunities. FLPMA clearly directs BLM to give priority to designate and protection of ACECs; in de-designating the Cedar Mesa ACEC, BLM gets it utterly wrong.

Issue Number: PP-UT-MONTICELLO-08-0017a-49

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Management of WSAs in accordance with the IMP and the management prescriptions of an SRMA would be of little comfort to the R and I values unfortunate enough to be located within Arch Canyon – which is neither in a WSA nor included in the SRMA proposed for the rest of Cedar Mesa. The BLM essentially prioritizes mismanagement for this canyon – leaving parts of the area open to standard oil and gas leasing terms, VRM III classification and designation of a motorized route that destroys the riparian zone, threatens cultural resources and negatively impacts designated critical habitat for the Mexican spotted owl. The ID Team notes that Arch Canyon specifically contains R and I cultural and wildlife values. PRMP at Appendix H-12. The ID Team recommended that Arch Canyon be "either closed to OHV or limited to designated with seasonal restrictions" and that the canyon be designated at least a Special Emphasis Area – presumably because special management attention is required to protect the values. PRMP at Appendix H-15.

Summary

The proposed RMP drops the ACEC designation in favor of a Special Recreation Management Area (SRMA) designation for Cedar Mesa, Arch Canyon, Butler Wash and Dark Canyon. This violates the requirements of BLM Manual 1613.5 to make the ACEC designation the "principal"

designation. This management strategy is exactly backwards, because the protection of values is now explicitly subordinate to the primary management thrust of providing recreation opportunities.

Response

The BLM did not err in dropping the ACEC designations from these areas. It is true that FLPMA requires that priority be given to the designation and protection of ACECs in the land use planning process. However, the BLM considers a number of factors when determining whether to designate a potential ACEC. One such factor is whether the same management prescriptions would have been provided for the area in the absence of the relevant and important (R and I) values (BLM Manual 1613.33E.1). Another is whether the area is being proposed for designation under another authority (such as wilderness) which would afford similar management attention (BLM Manual 1613.33E.2). The BLM considered these factors and determined that similar management of the key resources could be best achieved by an SRMA designation coupled with the existing WSA designations. Protective measures outlined for the ACECs have been carried over in their entirety to the SRMAs, thus providing the same protective measures.

Cedar Mesa ACEC had cultural, scenic and wildlife values and is a popular destination for back-country recreation use. Due to this high recreation use, PRMP at 2-32, the goals and objectives for the Cedar Mesa SRMA are to use visitor information and interpretation as a primary tool to protect sensitive resources, discourage vandalism and encourage visitor appreciation of public lands. In this SRMA, recreational opportunities will be managed with stipulations to protect cultural resources. Limitations on group size, pack stock, pets and campfires all will have a positive effect in protecting cultural resources. Visiting cultural sites is a key part of the recreational experience; the preservation of the cultural resources in this SRMA is directly tied to a quality recreational experience.

Additional management prescriptions for the use and enjoyment of this area will be developed in a joint, implementation-level recreation and cultural resources management plan. This plan will revise a cultural resources management plan for the area completed in 1993 and will emphasize the importance of cultural resources by including protective measures, design of cultural site monitoring systems, identification of sites and areas in need of stabilization, development of research designs, designating sites for interpretive and educational development, identification of areas for inventory and designating sites and areas for nomination to the National Register, among other things.

Scenic values in the Cedar Mesa area are in the Valley of the Gods Special Emphasis Area of the ACEC. Under the proposed plan, this protection will be continued with designation of this area as a stand-alone ACEC.

The relevant and important wildlife values in the Cedar Mesa ACEC are in Arch Canyon, which is included in the Cedar Mesa SRMA. Critical habitat for Mexican spotted owl in or near the canyon is protected with the stipulation that vehicle use is limited to the existing routes. OHV travel for organized and/or commercial groups is prohibited in the upper ½ mile of the canyon during the breeding and nesting season for Mexican spotted owls.

The Dark Canyon ACEC had scenic and wildlife relevant and important values. This ACEC lies entirely within the Dark Canyon WSA. Under the SRMA designation it will be managed under IMP which includes closure to OHV use and oil and gas leasing and management to retain VRM I scenery. Scenic values will be well protected with this management. Wildlife values will be protected with this management along with restrictions on trip and group size numbers.

Butler Wash ACEC was designated for relevant and important scenic values. It too lies entirely within a WSA (Butler Wash) and management as an SRMA under IMP will provide the same protection of visual resources as noted for the Dark Canyon SRMA.

The BLM did not err in not keeping the ACEC designation along with the existing WSA and modified SRMA designations. There is no requirement that the BLM "layer" an area with more than one special designation. The BLM has determined that the management prescriptions for WSAs and SRMA designations are adequate to protect and manage the relevant and important values within these areas.

Designation of Shay Canyon

Issue Number: PP-UT-MONTICELLO-08-0006-16

Protester: Owen Severance

Issue Excerpt Text:

The 1991 RMP established the Shay Canyon ACEC to protect Cultural Values (1991 RMP, p.93). The proposed RMP adds Paleontological Values (Appendix H, pp. H-29 to H-31). According to the cultural resource records, all of this area has a high density of archaeological sites, mostly petroglyph and pictograph sites which are extremely vulnerable to vandalism. The proposed RMP reduces the ACEC acreage from 3,561 acres to 119 acres (p. 2-62). The existing ACEC has a high density of archaeological sites according to BLM and State site records; approximately 200 sites have been recorded in this area. The proposed 119 acre ACEC has fewer than 10. Much of the existing ACEC has been placed in the Indian Creek SRMA and the protection of cultural resources is reduced. (Compare management prescriptions on pp. 2-62 and 2-63 to pp. 2-40 and 2-41.) This violates the requirements of BLM Manual 1613.5 to make the ACEC designation the "principal" designation for areas that need special management attention. The entire ACEC (3,561 acres) as designated in the 1991 RMP should be retained in the approved RMP.

Response

The Shay Canyon ACEC was reduced in size to the most critical area needing protection of cultural resources. In addition, when considering the paleontological resources found in the area, the BLM concluded that relevant and important values were focused primarily in the 119 acre ACEC. The majority of the cultural sites located in the area not being designated as an ACEC are rock art and due to their location on boulders or rock cliff faces, they are not as susceptible to damage from surface disturbing activities as are surface sites or structures. The 119 acre ACEC now includes only the area surrounding the mouth of Shay Canyon which includes a very rare paleontological site and cultural sites. Because of these features, it is the most heavily visited area by recreationists and the most important area to protect.

The remainder of the original ACEC will be managed under prescriptions which include VRM II (Map 71), designated roads and trails (Map 63), controlled surface use for oil and gas leasing (Map 32) and compliance with Section 106 of the NHPA for any proposed surface disturbing activity. In addition, camping will be prohibited in the Indian Creek riparian corridor and any

rock climbing routes determined to impact cultural sites will be closed (PRMP/FEIS at 2-41). The Indian Creek riparian area will also be managed under prescriptions for riparian areas including exclusion from surface disturbance by mechanized or motorized equipment and will be subject to fire suppression efforts that protect or enhance the riparian community (PRMP/FEIS at 2-16 and 2-47; Appendix A, page A-3; Appendix B, page B-4 and Appendix F, all). All of these prescriptions will provide a degree of protection to cultural resources.

Designation of Scenic Highway

Issue Number: PP-UT-MONTICELLO-08-0017a-56

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Scenic Highway Existing ACEC: This existing ACEC was found to meet R and I values requirements in the 1991 San Juan RMP and there is not explanation of what has changed. Nevertheless, the BLM ID Team claims that the scenic qualities are now not more than locally significant and therefore not important. PRMP at Appendix H-28. These claims are subjective and specious. Highway 95 is a National Scenic Byway, a title that gives national significance to the scenery in this corridor. ACECs can protect scenic highway corridors. One relevant example would be the existing and proposed continued designation of a corridor ACEC on Interstate 70 through the San Rafael Swell in the Price Field Office. See Price PRMP. The ID Team made an incorrect decision in the process of ACEC review by not finding at least, at minimum, the Highway 95 corridor to meet importance requirements.

Response

As noted in the protest, the BLM reevaluated the existing ACEC and determined that the scenic qualities along the highway corridors do not meet the ACEC criteria for relevance and importance. During this planning process, the BLM determined that the viewsheds along the highway corridors, even though some sections are quite scenic, are not uncommon and are typical of those found throughout the Colorado Plateau. Regardless of that determination, parts of these corridors traverse through or are adjacent to other special designation areas that provide some degree of protection for scenic values. These include the Cedar Mesa SRMA (managed as VRM Class II), the White Canyon SRMA (managed as VRM I and II), the Valley of the Gods ACEC (managed as VRM I), and six WSAs (Cheesebox Canyon, Mule Canyon, Fish Creek Canyon, Road Canyon and the Grand Gulch ISA Complex) which are all managed as VRM I. These designations are considered adequate to manage the scenic values along these highways. Because no further special management is deemed necessary, the ACEC is not once more designated.

Designation of Hovenweep

Issue Number: PP-UT-MONTICELLO-08-0017a-52

Organization: Southern Utah Wilderness Alliance et al.

Protester:

Issue Excerpt Text:

Hovenweep Existing ACEC: The ID Team determined that adding 620 acres acquired by the BLM would enhance protection of the R and I values and bring management consistency to lands adjoining the National Monument better protecting the resource values. PRMP at Appendix H-21. This expansion is found in several alternatives but not in the proposed plan and there is no rationale for this decision.

Response

The BLM's Proposed Plan approves the inclusion of 641 acres to the existing Hovenweep ACEC. Please refer to page 2-56 of the PRMP/FEIS, where the existing ACEC under the no action alternative is described as being 1,798 acres in size and, under the proposed plan, the ACEC is expanded to 2,439 acres in size. This increase in acreage represents the inclusion of the 641 acres. This addition is also reflected in Map 53 of the PRMP/FEIS. Please note that the estimated acreage in Appendix H at H-21 ("620+ acres") has been updated; the size of the area of expansion is actually 641 acres.

Air Resources

Issue Number: PP-UT-MONTICELLO-08-0017a-14

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The Monticello PRMP arbitrarily selects monitoring data from areas that may not be as reflective of actual background concentrations in the planning area thereby understating true levels of pollution. The Monticello PRMP has unjustifiably adopted background concentrations for NAAQS criteria pollutants that are lower than those contained in the Draft RMP. Compare PRMP at 3-5 to -6, with Monticello Draft RMP at 3-6. For example, the PRMP has adopted a 24-hour maximum average concentration for PM 2.5 of 13 ug/m³. PRMP at 3-6. This figure is taken from a three-year average of data from Farmington, New Mexico. Id. However, the Draft RMP had values of 10 ug/m³ and 26 ug/m³—from Telluride and Durango, Colorado, respectively—for this same 24-hour maximum average. Monticello Draft RMP at 3-6. The PRMP makes no effort to explain why it has abandoned these previous values.

Issue Number: PP-UT-MONTICELLO-08-0017a-16

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Likewise, the Monticello PRMP has downplayed and understated background ozone levels in the planning area. Ozone is a serious problem in the planning area. See, e.g., Williams, Letter at 6-8. The PRMP dismisses without any explanation the previous values that it had listed for 8-hour average concentrations of ozone in the Draft RMP. The Draft RMP had values, aside from La Plata County, Colorado, of 0.08 parts per million (ppm), 0.078 ppm, and 0.075 ppm from various monitors in the region. Monticello Draft RMP at 3-6. The 0.075 ppm

value was observed at a monitor in San Juan County, Utah at Canyonlands National Park. Id. The NAAQS limit for 8-hour average ozone concentrations is 0.075 ppm. See PRMP at 3-6. Thus, the Draft RMP showed that ozone concentrations in the planning area were likely at the limit, or above, NAAQS. The PRMP admits that ozone concentrations are "near" NAAQS limits, yet the new background figures contained the PRMP has dismissed the background values found in the Draft RMP without any explanation, thereby downplaying the severity of this problem. See PRMP at 3-13.

Issue Number: PP-UT-MONTICELLO-08-0017a-21

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The Monticello PRMP does not discuss or examine PSD increment limits (particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide). Ms. Williams alerted BLM to this inadequacy and described how such analysis must be done. See Williams, Letter at 9-10. The PRMP does not evaluate this, despite a promise in the Response to Comments section to do so. See PRMP, Response to Comments, sorted by Resource, at 49 of 378. These federal air quality standards are also the State of Utah's air quality standards. Thus, there is no evidence, certainty, or indication that the Monticello PRMP will comply with federal and state air quality standards as NEPA and FLPMA require.

Issue Number: PP-UT-MONTICELLO-08-0017a-22

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

NEPA also requires that BLM model the impacts from the various activities—and fully inventory the pollutants generated by these activities—permitted by

the Monticello PRMP. “NEPA ‘prescribes the necessary process’ by which federal agencies must ‘take a “hard look” at the environmental consequences’ of the proposed courses of action.” Pennaco Energy, Inc. v. U.S. Dept. of the Interior, 377 F.3d 1147, 1150 (10th Cir. 2004) (quoting Utahns for Better Transp. v. U.S. Dept. of Transp., 305 F.3d 1152, 1162–63 (10th Cir. 2002)) (internal citation omitted). The fundamental objective of NEPA is to ensure that an “agency will not act on incomplete information only to regret its decision after it is too late to correct.” Marsh v. Or. Natural Resources Council, 490 U.S. 360, 371 (1990) (citation omitted). Without preparing modeling to determine what the ambient concentrations of relevant pollutants will be, BLM cannot understand or disclose the impacts of these pollutants on humans, wildlife, vegetation, water bodies, or the climate. Since it is actual ambient concentrations that will impact these various components of the ecosystem, BLM must model concentrations to understand these impacts. This is why the EPA demanded that the Moab PRMP include dispersion modeling to support its statements that the activities permitted in that plan would not harm air quality. See Letter from Svoboda to Northrup at 1-2. Likewise, BLM’s deficient air quality analysis here does not satisfy NEPA’s hard look requirement.

Issue Number: PP-UT-MONTICELLO-08-0017a-26

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Among other things, BLM has failed to inventory the particulate matter pollution, differentiated for PM 2.5 and for PM 10, which will be generated by fugitive dust from vehicles for anything but oil and gas development. The existence of designated routes and travel of automobiles and ORVs on designated routes will generate significant amounts of fugitive dust which will negatively affect air quality in the region. The Monticello PRMP and its air quality emissions inventory have completely failed to consider such emissions. The Monticello PRMP acknowledges that ORVs are significant contributors of fugitive dust. See, e.g., Monticello PRMP at 4-17; 3-13 (“Most recreational visitors engage in motorized activities that are emission sources in addition to highway vehicles used for transportation.”). However, the PRMP then downplays the potential impacts of vehicle travel on unpaved roads by stating that air quality in the region is fine and that such activity is not likely to lead to exceedances of air quality standards. See, e.g., id.

Issue Number: PP-UT-MONTICELLO-08-0017a-27

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM itself attempted to estimate fugitive dust emissions from the passage of vehicles on unpaved roads. Furthermore, it then modeled these emissions to arrive at predicted ambient concentrations of various pollutants. The Monticello PRMP contains no such analysis; this quantification and modeling must be conducted in order to understand where BLM’s plans will comply with federal and state air quality standards and to know what impact they may have on human health, wildlife, vegetation, water bodies, and the climate.

Issue Number: PP-UT-MONTICELLO-08-0017b-18

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP’s failure to include an analysis of impacts on air quality from its ORV designations and travel management decisions does not comply with FLPMA’s mandate to comply with federal and state air quality standards, NEPA’s hard look requirement (including baseline information as well as impacts analysis) or with the ORV regulations’ minimization requirements. Implementation of the PRMP will result in air pollution (e.g., through designation of, and approval of motorized use on, designated open areas and routes), which requires that air quality modeling and quantitative analysis be undertaken before the Final RMP is issued.

Issue Number: PP-UT-MONTICELLO-08-0017a-11

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Both the State and Federal standards are based on ambient concentrations of various air pollutants. BLM does not know whether it is satisfying its obligation to observe air quality standards without modeling the effect that the activities permitted in the PRMP will have on ambient concentrations of various pollutants, such as those related to NAAQS and PSD increment limits. See, e.g., PRMP at 4-16 to -31 (predicting likely quantities in tons per year—not ambient concentrations—of various pollutants that will result from plan implementation). Ms. Williams also described the importance of such modeling and what that entails. See Williams, Letter at 16-19.

Issue Number: PP-UT-MONTICELLO-08-0017a-29

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In summary, the Monticello PRMP does not adequately analyze the impacts to air quality that will result from the area and route designations, and activities planned and permitted in this document. Because the planning area has levels of ozone that are near the point of exceeding NAAQS, or that are exceeding NAAQS, BLM must disclose that it is prevented by FLPMA and the Clean Air Act from approving any activities that would further exacerbate or exceed these levels. The failures described above are contrary to both FLPMA and the Clean Air Act, which require that BLM observe air quality standards, and NEPA, which requires that BLM disclose the impacts of the activities it is analyzing. BLM must prepare a comprehensive emissions inventory, which includes fugitive dust emissions, and then model these figures in near-field, far-field, and cumulative analyses. Without doing so, BLM cannot know what impact these activities will have and whether it is complying with federal and state air quality standards. BLM may not authorize any activities which will contribute ozone precursors (NOX and VOCs) or PM2.5 to ambient concentrations in the planning area (e.g. it may not permit any vehicular travel on designated routes or permit any oil and gas development) if these emissions will lead to exceedances of federal or state air quality standards.

Issue Number: PP-UT-MONTICELLO-08-0017a-4

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

FLPMA requires that BLM manage the planning area according to federal and state air quality standards. See 43 C.F.R. § 2920.7(b)(3) (requiring that BLM “land use authorizations shall contain terms and

conditions which shall . . . [r]equire compliance with air . . . quality standards established pursuant to applicable Federal or State law”) (emphasis added); see also 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans—which would therefore require implementation in daily management—to “provide for compliance with applicable pollution control laws, including State and Federal air . . . pollution standards or implementation plans”). These air quality standards include both the national ambient air quality standards (NAAQS) and the prevention of significant deterioration (PSD) increment limits. The Monticello PRMP also cryptically states that it is a goal of BLM to “[e]nsure that authorized uses on public lands meet or comply with and support federal, state, and local laws and regulations.” See Monticello PRMP at 2–9. However, this vague and ambiguous guidance must be supplemented to include an affirmative statement by BLM that it will “[r]equire compliance with air . . . quality standards established pursuant to applicable Federal or State law, as its own regulations require.” See, e.g., 43 C.F.R. § 2920.7(b)(3).

Issue Number: PP-UT-MONTICELLO-08-0017a-7

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

these letters [from the EPA regarding the Vernal and Moab PRMPs] confirm that BLM has authority to ensure that oil and gas operators—and others—are not permitted to undertake activities on public lands that will result in air quality violations or exceed air quality standards. See Letter from Svoboda to Northrup at 1-3; Letter from Svoboda to 1-3. BLM may therefore impose standards and requirements on these operators and other in order to avoid running afoul of federal and state air quality standards. See Letter from Svoboda to Northrup at 1-3; Letter from Svoboda to Sierra at 1-3. This directly contradicts statements by BLM in the PRMP to the contrary. See PRMP, Response to Comments, sorted by Resource, at 42 of 378.

Summary

The BLM failed to adequately analyze impacts to air resources, particularly OHV and other travel related impacts. The BLM did not quantitatively assess air pollutants through dispersion modeling in order to analyze impacts of BLM activities on air resources. The BLM should have conducted a Prevention of Significant Deterioration (PSD) analysis and modeling for ozone and other NAAQS.

Response

The BLM evaluated the available information, the scope of the analysis, the issues, and the decisions to be made and from this determined that a qualitative emissions analysis was the most appropriate tool for comparing alternatives and evaluating potential effects on air resources from decisions made as part of this RMP effort. Quantitative dispersion modeling for air pollutants (CO, NO_x, SO₂, PM₁₀, and PM_{2.5}, VOC, HAPs) and photochemical grid modeling for ozone require detailed information regarding source locations and emissions in order to produce meaningful results. In the judgment of BLM air quality specialists, the available, reasonably foreseeable data were not sufficient to go forward with modeling for ozone (or other air pollutants) as part of this planning effort. The best available data and methodology was used in the analysis presented and in supporting conclusions that NAAQS will be met, based on the available information and reasonably foreseeable data.

The emissions comparison analysis was based on the best available engineering data and assumptions, air, visibility, and atmospheric deposition data, and emission inventory procedures, as well as professional and scientific judgment. This analysis includes detailed discussions of various authorized activities, such as OHV and other travel related decisions, on air resources (section 4.3.1.3). It compares predicted emissions from these activities under various alternatives and also compares emissions to existing base year data to help provide context for assessing potential future impacts.

The PSD program applies only to stationary source permitting activities and does not apply to land use planning decisions. Under the Clean Air Act and EPA regulations, the sole legal responsibility for preparation of a PSD increment consumption analysis lies with the State, with EPA oversight, and not the BLM. This will be done by a regulatory PSD Increment Consumption Analysis (PICA) that will be triggered by a proposal for a large project or point source such as a power plant. However, the BLM may sometimes use PSD increments in NEPA analysis as a significance threshold strictly for comparison and disclosure purposes.

Emissions Inventory/Modeling and Air Quality

Issue Number: PP-UT-MONTICELLO-08-0017a-3
Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The Monticello PRMP fails to model the impacts of the activities that it permits on air quality in the planning area. NEPA, FLPMA, and the Clean Air Act require that BLM prepare such analysis. Without preparing near-field, far-field, and cumulative air quality analyses, BLM will not understand the effects of the pollutants that it has attempted to partially inventory in the Monticello PRMP, thereby violating NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting. In addition, BLM must model pollution concentrations in order to understand if this plan will

comply with federal and state air quality standards, as required by FLPMA and the Clean Air Act.

Issue Number: PP-UT-MONTICELLO-08-0017a-8
Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

EPA also instructs BLM that it cannot declare that air quality in the planning area will be protected without providing the results of dispersion modeling to confirm that conclusion. See Letter from Svoboda to Northrup at 1-2. As EPA says, BLM must perform dispersion modeling or it will not be able to determine whether its authorizations and planned activities will comply with federal and state air quality standards.

Summary

The BLM violated NEPA and the CAA by failing to quantitatively analyze air pollutants through dispersion modeling.

Response

Chapter 2 of the PRMP clearly states the BLM's intent to continue to manage air quality to ensure that authorized uses on public lands comply with and support federal, state, and local laws.

The BLM is in full compliance with the hard look requirements of FLPMA and NEPA. In Section 4.3.1 of the Monticello PRMP/FEIS, the BLM analyzed the potential impacts to air quality using the best available information from various monitoring networks, existing emission inventories, and predicted emissions from reasonable foreseeable actions. A comparative emissions approach was determined to be the appropriate analysis tool to compare alternatives and provide a general sense of potential air pollutant emissions (CO, NO_x, SO₂, PM₁₀, and PM_{2.5}, VOC, HAPs) over the life of the plan. Emissions calculations were based on the best available engineering data and assumptions; air, visibility, and emission inventory procedures; and professional and scientific judgment. This approach was selected because of uncertainties about the number, nature, and specific location of future sources and activities.

A more quantitative approach or dispersion modeling requires specific knowledge of sources, emission rates, and locations in order to provide reliable and reasonable results. The BLM cannot determine with reasonable certainty a number of key parameters that would be necessary for modeling of air pollutants at this time or at this scale of planning. The uncertainty of the modeling results without sufficiently detailed data would render the results virtually meaningless. The best available data and methodology were used in the analysis presented and in forming conclusions that NAAQS will be met.

Climate Change

Analysis of Potential Climate Change

Issue Number: PP-UT-MONTICELLO-08-0017b-129

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

This omission [of a description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water and the health of riparian areas, zones of soil erosion or vulnerability to erosion] is a significant oversight given that federal departments and agencies including the Department of Interior, the Environmental Protection Agency, and U.S. Geologic Survey have all published documents and/or provided public statements and even congressional testimony acknowledging the impacts of climate change on public lands resources. A 2007 study, referred to

herein as the "Utah Climate Change Report," notes that the western United States is warming at about twice the rate of the rest of the globe. Id. at 2.1. All of this information was readily accessible to BLM. Together with the failure to incorporate the newer studies cited above, this oversight amounts to a failure to take the necessary "hard look" at the challenge of resource management in the MFO, and an important aspect of that challenge.

Issue Number: PP-UT-MONTICELLO-08-0017b-131

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Clearly, information about the impacts of climate change and the need to make adjustments in land use

plans to address climate change were circulating in the Department of Interior and available to BLM at the same time it was developing the Monticello PRMP. Failure to incorporate this information in the PRMP amounts to a failure to take a hard look at a crucial aspect of the land use plan.

Issue Number: PP-UT-MONTICELLO-08-0017b-135

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Again, the impacts of climate change were simply not discussed; such an omission violates this section of the NEPA regulations. Thus, it is clear that BLM has failed to take a hard look—or virtually any look—at

the impacts of climate change on the public lands resources in the Monticello Field Office, and how ongoing and foreseeable climate change will affect the uses, health and sustainability of those resources.

Issue Number: PP-UT-MONTICELLO-08-0017b-139

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

As noted above, no analysis of potential climate change impacts to the Monticello Field Office was provided in the PRMP. BLM simply ignored the Secretarial Order, opting instead for the boilerplate insertion of superficial and incomplete information regarding climate change.

Summary

The BLM has failed to take a hard look at the impacts of climate change, despite the Secretarial Order.

Response

The impacts of climate change are adequately discussed in Section 4.3.1.1 of the PRMP/FEIS given the level of detail required for a landscape-level analysis and the lack of existing data or modeling methodology. Additionally, a general discussion relating to the climate and to global climate change is provided in Sections 3.1.2 and 3.2.7 of the PRMP/FEIS.

Climate change analyses are comprised of several factors, including greenhouse gases (GHGs), land use management practices, and the albedo effect. The tools necessary to quantify climatic impacts of those factors are presently unavailable. As a consequence, impact assessment of specific effects of anthropogenic activities cannot be determined at this time. Additionally, specific levels of significance have not yet been established. Further, the Environmental Protection Agency (EPA) has not developed a regulatory protocol or emission standards regarding global climate change. When such protocols and standards are available, the BLM will analyze potential effects on global warming in the NEPA documentation prepared for site-specific projects and implementation level actions, such as for oil and gas field development, allotment management plans, and public land use authorizations.

In compliance with the requirements of the NEPA, the public will have the opportunity to participate in the environmental analysis process for actions implementing the Proposed Plan. As more detailed studies on climate change become available, the existing analysis presented in the PRMP/FEIS will be evaluated to determine its validity in light of this new information and details about subsequent proposed actions in the planning area.

Potential Supplemental Draft

Issue Number: PP-UT-MONTICELLO-08-0017b-141

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

As noted above, BLM briefly discussed climate change in the PRMP, but entirely failed to mention it in the Draft RMP. But 40 C.F.R. § 1502.9(c)(1) requires BLM to prepare an SEIS if “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.” The new climate change information should warrant an SEIS because it meets the threshold for “significant” new information, as outlined in 40 C.F.R. § 1508.27.

Issue Number: PP-UT-MONTICELLO-08-0017c-2

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Here, BLM introduced an important issue concerning the future management of the Monticello Field Office for the very first time at the very last minute -- in the final plan. The public, interested parties, and those with expertise in climate change had no reason to know that climate change was an important aspect of the BLM’s future planning environment, and no opportunity to review the information before the release of the final plan and provide input to BLM about its accuracy or completeness. This is a violation of NEPA’s objective to educate both the public and the decision maker, and as a result, the climate information should be improved and released for public comment in a revised draft plan and EIS.

Summary

Climate change is significant new information that requires supplementing the EIS.

Response

A supplemental EIS is appropriate where new information will cause the proposed action to have a significant impact on the environment in a manner not previously evaluated and considered. Although there is new information regarding climate change, the existing analysis remains valid in light of this new information because such information does not substantially change the analysis of the proposed action, and does not change any of the final decisions. Therefore, preparing a supplemental EIS in light of this information will serve no purpose in informing the decision-maker about the impacts of BLM activities on global climate change. In the future, if the BLM determines that climate change is having a continued effect on public land resources and programs, the BLM will re-evaluate the land management status for that given area and adjust management accordingly.

There is no technical basis or standard accepted protocols for evaluating activities conducted under this PRMP or making changes to alternatives considered based on global climate change. The information on climate change cited in the protest does not meet the criteria for new or significant information, nor does it change the context or intensity of the effects analyzed in this decision because of the following four factors: (1) it is not possible at this time to link specific quantities of emissions to specific impacts to climate change (i.e. change in temperature or ambient atmospheric concentration); (2) the FEIS addresses climate and drought issues adequately, given the information available at the time such analyses were conducted; (3) the newest information available does not indicate that the climate and drought analyses are inadequate for the purposes of making a reasoned choice among the alternatives; and (4) new information will be assessed at the implementation level, which is subject to the public notice and comment process.

Cultural Resources

Compliance with the National Historic Preservation Act Section 106 and Class III Inventory Requirements

Issue Number: PP-UT-MONTICELLO-08-0015-10

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

The Final EIS lacks adequate baseline data concerning the existing condition of significant cultural resources in the Monticello Field Office. BLM is required to "describe the environment of the area(s) to be affected or created by the alternatives under consideration," 40 C.F.R. § 1502.15,

Issue Number: PP-UT-MONTICELLO-08-0015-22

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

First, as described in Section 1V.e.1a, above, 1M 2007-030 violates Section 106 of the NHPA by exempting "existing" OHV routes from the Section 106 process. Thus, it is not appropriate for BLM to claim Section 110 compliance through a policy that violates Section 106. Further, in developing a strategy for complying with Section 106, BLM must consult with parties other than the Utah SHPO, including tribes that claim religious and cultural affiliation to properties that may be affected by OHV route designations, 36 C.F.R. § 800,2(c)(2); parties with a demonstrated interest in potentially affected historic properties, Id. § 800,2(c)(5); and the Advisory Council on Historic Preservation due to the affect that OHV route designations may have on the Alkali Ridge NHL. id. § 800,10(b)

Issue Number: PP-UT-MONTICELLO-08-0015-24

Organization: National Trust for Historic

Preservation

Protester: Ti Mays

Issue Excerpt Text:

3.The Proposed RMP violates Section 110(a)(2)(E)(i) of the NHPA. The Proposed RMP violates Section 110(a)(2)(E)(i) of the NHPA, which requires an agency's Section 106 procedures to be consistent with the Advisory Council's regulations, Unlike the broad mandates of subsections (a)(1), (a)(2)(B) and (d), subsection (a)(2)(E)(i) of Section 110 imposes a discrete requirement upon BLM-to ensure "that the agency's procedures for compliance with Section 106 . . . are consistent with regulations issued by the Council." 16 U.S.C. § 470h-2(a)(2)(E)(i); see also Northwest Env'tl. Def. Ctr. v. Bonneville Power Admin., 477 F.3d 668, 686 (9th Cir. 2007) (noting the obligatory nature of statutory consistency requirements). For the reasons spelled out in Section 1V.e.1a of this protest, the Proposed RMP's Section 106 procedures are inconsistent with the Section 106 regulations. Therefore, BLM has violated Section 110(a)(2)(E)(i) of the NHPA.

Issue Number: PP-UT-MONTICELLO-08-0017b-7

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Moreover, BLM has failed to provide any basis for its decision not to inventory the cultural sites impacted by the ORV route designations. (This flaw runs through the BLM's analysis of many of the affected resources.) This violates NEPA regulations which require, with respect to incomplete or unavailable information, that BLM provide specified additional information.

Summary

The BLM has not properly addressed impacts to cultural resources. Specifically, impacts of OHV use on existing routes are not addressed. Impacts are not known because sites remain undiscovered. The BLM has failed to provide any basis for its decision not to inventory the cultural sites impacted by the ORV route designations. The BLM must consult with parties other than the Utah SHPO, including tribes that claim religious and cultural affiliation to properties that may be affected by OHV route designations.

Response

The requisite level of information necessary to make a reasoned choice among the alternatives is

based on the scope and nature of the proposed action. In preparing the PRMP/DEIS, the BLM used the best available information to form the basis for the cultural resources analysis. This baseline data is the result of Section 106 and 110 inventories for the planning area and represents the volume of information available. Based on the BLM's professional knowledge and experience the BLM determined sufficient information exists to form the basis of the analysis. Any potential surface disturbing activities based on future proposals will require compliance with Section 106 and site-specific NEPA documentation. The BLM will comply with its Section 106 responsibilities as directed by the NHPA regulations and BLM WO IM-2007-030 (Clarification of Cultural Resource Considerations for Off-Highway Vehicle Designation and Travel Management). As described in BLM WO IM-2007-030, cultural resource inventory requirements, priorities and strategies will vary depending on the effect and nature of the proposed OHV activity and the expected density and nature of historic properties based on existing inventory information.

A. Class III inventory is not required prior to designations that (1) allow continued use of an existing route; (2) impose new limitations on an existing route; (3) close an open area or travel route; (4) keep a closed area closed; or (5) keep an open area open.

B. Where there is a reasonable expectation that a proposed designation will shift, concentrate or expand travel into areas where historic properties are likely to be adversely affected, Class III inventory and compliance with Section 106, focused on areas where adverse effects are likely to occur, is required prior to designation.

C. Proposed designations of new routes or new areas as open to OHV use will require Class III inventory of the Area of Potential Effect (APE) and compliance with Section 106 prior to designation. Class III inventory of the APE and compliance with Section 106 will also be required prior to identifying new locations proposed as staging areas or similar areas of concentrated OHV use.

D. Class II inventory, or development and field testing of a cultural resources probability model, followed by Class III inventory in high potential areas and for specific projects, may be appropriate for larger planning areas for which limited information is currently available.

The BLM analyzed cumulative impacts in Chapter 4 and presented a reasonable estimate of the incremental impact to cultural resources as a result of trends in management direction, oil and gas development, increased recreational use of public lands and the protection or lack thereof afforded by the various alternatives. While these impacts are impossible to quantify, the PRMP/FEIS presents what the BLM considers to be a realistic and qualitative forecast of the general types of impacts that may be expected from various uses. This forecast is comparative; for example, these kinds of impacts would increase or decrease more under alternative X than they would under alternative Y. The BLM has conducted all necessary consultation with the SHPO, and the SHPO has provided written concurrence, which will be appended to the ROD. The BLM conducted all relevant consultations required by Section 106, including with the tribes (see Section 5.2.1.).

Consultation on “Avoidable” Impacts

Issue Number: PP-UT-MONTICELLO-08-0015-20

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

Because the Proposed RMP exempts undertakings with "avoidable" effects from Section 106, the plan violates Section 106 as well as the Utah State Protocol. The offending language, contained in a management prescription for the Designated Alkali Ridge and Hovenweep ACECs, reads as follow: Where the BLM authorized officer determines that avoidance of direct and indirect impacts to historic properties is not feasible (e.g., avoidance may cause unacceptable damage to other public land resources or affect valid existing rights) and adverse effects may occur, the BLM would resolve those effects through development of appropriate mitigation measures and consultation under Section 106 of the National Historic Preservation Act as outlined in the regulations as 36 CFR 800. Proposed RMP at 2-49; 2-56. Under this rubric, the authorized office would have unilateral authority to exempt undertakings with "avoidable" effects from Section 106. As a consequence, BLM would not engage in consultation with the Advisory Council on Historic Preservation (Advisory Council), Utah SHPO, Indian tribes or other parties with a demonstrated interest in the undertaking concerning the identification of historic properties within the area of potential effects. See 36 C.F.R. § 800.4(a), (a)(3), (a)(4) (requiring consultation to identify historic properties within the area of potential effects). Nor would BLM consult with these parties over the measures developed by BLM to avoid effects. Id. § 800.6(a) (requiring consultation to "develop and evaluate alternatives. . . that could avoid, minimize or mitigate adverse effects"). In short, this management prescription would free BLM almost entirely of the obligation to consult under Section 106. Neither the Section 106 regulations nor the Utah State Protocol authorize such a drastic reduction in the scope of BLM's Section 106 responsibilities. Consequently, the Proposed RMP violates these authorities.

Response

The language that the protest refers to states that the BLM will comply with NHPA Section 106 for undertakings that are determined to possibly have potential adverse effects to cultural resources. This section is meant to highlight the BLM's commitment to follow the process if the BLM determines there is potential for adverse impacts to the cultural resources in a specific area. Inclusion of that statement was in no way meant to imply that the BLM will unilaterally make the decision not to follow Section 106 in all other cases, that is to say where sites could be avoided. The BLM will comply with Section 106 on all undertakings in these areas regardless of determination of effect. The language will be modified in the Record of Decision to more clearly reflect this distinction.

Class I Inventory Requirements

Issue Number: PP-UT-MONTICELLO-08-0006-5

Protester: Owen Severance

Issue Excerpt Text:

Section 8130.21 of the Cultural Resource Management Manual states: New RMPs, RMP revisions, and RMP amendments. The provisions in subsection .1 of this Manual Section apply to all pending RMPs, RMP revisions, and RMP amendments. All new and updated RMPs will identify the nature and importance of cultural resources in the RMP area; establish goals for their management; make cultural resource use allocation decisions in support of the objectives; and choose

management actions and prescriptions that will contribute to achieving those decisions.

Section 8130.21B states: Identification. The scope and scale of cultural resource identification is much more general and less intensive for land use planning than for processing specific land use proposals. Instead of new, on-the-ground inventory, the appropriate identification level for land use planning is a class I Existing Information Inventory; i.e., (1) a compilation and analysis of reasonably available cultural resource data and literature, and (2) a management-oriented synthesis of the resulting information. (See Manual Section 8110. 21A) However, if land use decisions are more specific in

terms of impacts, they may require a more detailed level of identification of the scope and nature of cultural resources during land use planning. An updated Class I overview was not prepared before the RMP was written. The existing overview, Cultural Resources Overview for BLM Lands in South San Juan County, Utah (Klessert 1982) is out of date. It is not discussed in the proposed RMP and is not listed in the "References" section.

The proposed RMP states: At the present time, no comprehensive overview of known cultural resource sites and cultural resource survey projects conducted to-date within the Monticello PA exists. The Monticello FO recognizes the need for such an overview and is currently pursuing its preparation in conjunction with the RMP revision. (Page 3-23.) The RMP has been finalized, and yet this overview has not been prepared.

The proposed RMP further states: While a synthetic audit of surveyed and as-yet unsurveyed lands within the Monticello PA is beyond the scope of this document, a cursory review of previous project location mapping available at the Utah State Historic Preservation Office (SHPO) suggests that less than 10% of all BLM lands within the Monticello FO PA have been subjected to intensive-level cultural resource inventories. As a consequence, there are still large areas for which there is no current information regarding the numbers, types, and distribution of cultural resources. (Page 3-24.) This is a violation of the Manual's requirement that a Class I inventory must be prepared before the RMP is written.

Issue Number: PP-UT-MONTICELLO-08-0014-20

Organization: Colorado Plateau Archaeological Alliance

Protester: Jerry D. Spangler

Issue Excerpt Text:

CPAA also noted in its DRMP comments that the RMP was prepared without a comprehensive overview (Class I) of cultural resources in the planning area, and this was not corrected in the PRMP. Cultural resource management considerations articulated in the PRMP are not based on a comprehensive understanding of the nature, distribution or density of sites within the planning area. Class I overviews provide the basic foundation for management decisions and objectives, and they are typically completed at the beginning of the RMP process to provide planners with all relevant data as management alternatives are developed. In this case, BLM planners had the benefit of no such analysis

Issue Number: PP-UT-MONTICELLO-08-0017b-111

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

CPAA also noted in its DRMP comments that the RMP was prepared without a comprehensive overview (Class I) of cultural resources in the planning area, and this was not corrected in the PRMP. Cultural resource management considerations articulated in the PRMP are not based on a comprehensive understanding of the nature, distribution or density of sites within the planning area. Class I overviews provide the basic foundation for management decisions and objectives, and they are typically completed at the beginning of the RMP process to provide planners with all relevant data as management alternatives are developed. In this case, BLM planners had the benefit of no such analysis.

Summary

An updated Class I overview was not prepared before the RMP was written. This is a violation of the BLM Manual 8130 (Planning for Uses of Cultural Resources) requirement that a Class I inventory must be prepared before the RMP is written.

Response

The manual direction in 8130.21B does not specify that a separate Class I document be prepared. Rather, it states that "the appropriate identification level for land use planning is a class I Existing Information Inventory; i.e., (1) a compilation and analysis of reasonably available cultural resource data and literature, and (2) a management-oriented synthesis of the resulting information." By this definition, the information contained in the Cultural Resource Section of Chapter 3 of the Monticello RMP (Section 3.3) constitutes an adequate Class I overview of cultural resources for the planning area and fulfills the requirements of Manual Section 8130.21 that is quoted in the protest.

For clarification purposes, the Monticello RMP includes a discussion of the “nature and importance of cultural resources” in Section 3.3 that addresses cultural resource history, ethnographic data, cultural resource overview, potential traditional cultural properties, and designated areas of critical environmental concern with cultural resource values. This chapter was written by subject matter experts using all available sources including previous literature reviews, state and local site databases, published reports, site forms, interviews, and opinions of subject experts.

Designation Changed from Cultural Special Management Area to Special Recreation Management Area

Issue Number: PP-UT-MONTICELLO-08-0006-10

Protester: Owen Severance

Issue Excerpt Text:

The draft RMP included four "Cultural Special Management Areas" that would recognize and supposedly protect the significant cultural resources in these areas: Comb Ridge, Tank Bench, Beef Basin, and McCloyd Canyon/Moon House (pp. 2-10 to 2-15). The proposed RMP changes the management of these areas to "Special Recreation Management Areas" instead. With this change in management focus, the cultural resources in these areas are automatically placed in the "Public Use" category. No provisions are made to inventory and protect the cultural resources in these areas as required by the Manual and Handbook 8110. These areas with important cultural resources should retain their "Cultural Special Management Area" status in the approved RMP in order to better protect the cultural resources.

Issue Number: PP-UT-MONTICELLO-08-0006-7

Protester: Owen Severance

Issue Excerpt Text:

Another part of Section 8130.02 that was ignored in the proposed RMP states: (c) identify and resolve use allocation conflicts with the potential to adversely affect cultural resources. In fact, the proposed RMP does not include "Use Categories" as required by Section 8130.21D. The use categories established in the 1991 RMP are obsolete and must be updated. "Allocation conflicts" are not discussed even though the proposed RMP creates Special Recreation Management Areas in parts of the planning area where the BLM acknowledges that high densities of cultural resources are located such as the Cedar Mesa SRMA and the Beef Basin SRMA. The cultural resources in these areas obviously will be in the "Public Use" category, but no data recovery decisions or mitigation measures are included in the RMP as required by 8130.21E. In fact, most of these areas

have not received an intensive cultural resource inventory, so the BLM does not even have baseline information on the condition of these sites.

Mitigation or protective measures cannot be discussed until the sites are recorded.

Issue Number: PP-UT-MONTICELLO-08-0014-26

Organization: Colorado Plateau Archaeological Alliance

Issue Excerpt Text:

The PRMP reclassifies Cedar Mesa from ACEC status to Special Recreation Management Area status. The justification for this change is not clearly stated in the planning document, nor does it articulate why management and protection of the abundant and spectacular cultural resources there would be more aggressively facilitated through SRMA designation than through ACEC designation. Likewise, the planning document does not explain why management of archaeological sensitive areas in the Comb Ridge/Butler Wash, Tank Bench, Beef Basin and McLoyd Canyon areas would be better facilitated through "Cultural Special Management Area" designations than through more protective management afforded through ACEC designation.

Issue Number: PP-UT-MONTICELLO-08-0017b-124

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP reclassifies Cedar Mesa from ACEC status to Special Recreation Management Area status. The justification for this change is not clearly stated in the planning document, nor does it articulate why management and protection of the abundant and spectacular cultural resources there would be more aggressively facilitated through SRMA designation than through ACEC designation. Likewise, the planning document does not explain why management of archaeological sensitive areas in the

Comb Ridge/Butler Wash, Tank Bench, Beef Basin and McLoyd Canyon areas would be better facilitated

through "Special Recreation Management Area" designations than through ACEC designation.

Summary

The Proposed RMP changes the management of four "Cultural Special Management Areas" to "Special Recreation Management Areas." These areas with important cultural resources should retain their "Cultural Special Management Area" status in the approved RMP in order to better protect the cultural resources.

Response

The Cultural Special Management Area designation was a new naming convention (unique to the Monticello RMP) which was created to protect cultural resources by managing visitor use. This designation proved to be confusing to the general public and was dropped in favor of the conventional designation of Special Recreation Management Area. This is particularly appropriate in this instance where recreation use poses the greatest threat to cultural resources. Managing recreation use is the primary mechanism for managing impacts to cultural resources. Protective measures outlined for the Cultural SMAs have been carried over in their entirety to the SRMA, thus providing for the same protection. Cultural Resource Management Plans (CRMP) will be written for these areas or incorporated into SRMA plans (PRMP/FEIS at 2-10). No decisions have changed, they have just been moved over to the Recreation section under the SRMAs.

Use of an SRMA designation does not automatically mean that all sites in an SRMA will be categorized as "Public Use"; rather the category of each site will be determined on a case-by-case basis. Allocation of known sites to use categories was done as part of the planning process and is available as part of the administrative record. Sites were categorized based on site type and, in certain cases, by individual site. Additionally, use conflicts at some individual sites were identified (eg. Moon House) and addressed in the RMP through special protective measures (see PRMP/FEIS at 2-38). Sites that are recorded in the future will be analyzed and assigned use categories either individually or as part of a site grouping.

Impacts to Alkali Ridge National Historic Landscape

Issue Number: PP-UT-MONTICELLO-08-0015-13

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

Yet the Proposed RMP lacks even this bare minimum level of information about significant cultural sites in the Monticello Field Office. For instance, the Proposed RMP provides the public with no information about the current condition of the Alkali Ridge National Historic Landmark (NHL)-"the defining morphological site type for the prehistoric Pueblo 1 cultural period," Proposed RMP at 3-143-even though prior "[h]eavy oil and gas exploration and development, intense pot hunting, and road

maintenance" have apparently harmed, to an unknown degree, cultural resources in this area. BLM, San Juan RMP: Management Situation Analysis 4331-31 (1985) [hereinafter 1985 J*iv*1S].

Issue Number: PP-UT-MONTICELLO-08-0015-16

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

Alkali Ridge highlights the Proposed RMP's overall lack of analysis concerning the potential impacts of designating over 2,000 miles of OHV routes on significant cultural resources in the Monticello Field Office. According to BLM, Alkali Ridge contains a

system of "connecting prehistoric roads" that are "only beginning to be understood but clearly represents a significant cultural manifestation in southeastern Utah." Proposed RMP at 3-27; BLM, Analysis of Management Situation 4-31 (Jan, 2005) [hereinafter 2005 AMS]. OHVs have apparently traversed portions of these prehistoric roads in the past, some of which are now being "used as riding trials," 2005 AMS at 4-32. Yet the Proposed RMP fails to acknowledge and evaluate this impact entirely, even though the plan designates OHV routes in the Alkali Ridge ACEC and NHL in the plan. See Proposed RMP at 4-485-89. Consequently, the Proposed RMP violates NEPA by failing to assess the direct, indirect and cumulative impacts of OHV use on significant cultural resources, including Alkali Ridge and Cedar Mesa

Issue Number: PP-UT-MONTICELLO-08-0015-26

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

The Proposed RMP violates Section 110(f). The Proposed RMP does not comply with Section 110(f) for the Alkali Ridge National Historic Landmark (NHL). Under Section 110(f), BLM "shall, to the

maximum extent possible, undertake such planning and actions as may be necessary to minimize harm" to NHLs. 16 U.S.C. § 470h-2(f). Although the Proposed RMP acknowledges Alkali Ridge's NHL designation, it lacks the "planning and actions" to "minimize harm" on the NHL from potentially harmful activities like OHV use and oil and gas leasing and development. For example, the Proposed RMP designates OHV routes within the NHL even though sites within the area are "subject to vehicle damage because many valuable architectural remnants are below the surface and not 'showy' to the casual visitor," Adrienne Babbitt, Public Affairs Specialist, BLM, "Saving An American Treasure: Ten archaeological sites in Utah's Canyon Country will be stabilized and protected," Utah Division of State History Currents (Fall 2006). Roads associated with prior "[h]eavy oil and gas exploration and development" have also led to "intense pot hunting" and "road maintenance" harmful to the cultural values of Alkali Ridge. 1985 AMS at 4331-31. The Proposed RMP fails to show how BLM would "minimize harm" from the use of OHV routes in this area. Further, the Proposed RMP lacks a commitment from BLM to consult with the Advisory Council on undertakings that may affect the NHL, as required the Section 106 regulations.

Summary

The Proposed RMP lacks even this bare minimum level of information about significant cultural sites in the Monticello Field Office. The RMP does not address the direct, indirect, and cumulative impacts of OHV use on Alkali Ridge National Historic Landmark (NHL). Additionally, the document does not comply with Section 110(f) for the Alkali Ridge NHL which states that the BLM "shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm" to NHLs. Further, the Proposed RMP lacks a commitment from the BLM to consult with the Advisory Council on undertakings that may affect the NHL, as required by the Section 106 regulations.

Response

The Monticello PRMP/FEIS, includes a discussion of the nature and importance of cultural resources in Chapter 3 at Section 3.3. It addresses Cultural Resource History, Ethnographic Data, Cultural Resource Overview, Potential Traditional Cultural Properties, and Designated Areas of Critical Environmental Concern with Cultural Resource Values. This is the requisite amount of information required for the landscape-level analysis performed in an RMP.

The BLM adequately addressed the impacts from OHV use on Alkali Ridge ACEC (which includes the Alkali Ridge NHL) in the PRMP/FEIS at 4-483 through 4-489. Potential harm related to use of designated routes in the NHL will be addressed as part of the Inventory Protocol established for implementation of the BLM's travel plan. According to the protocol, NHLs and National Historic Districts will be first priority for inventory of designated routes.

The Monticello RMP has analyzed and addressed potential harm from other activities as well. Chapter 2 (PRMP/FEIS at 2-50) contains a variety of stipulations that provide greater protection to the NHL from impacts of other uses. These stipulations include, but are not limited to the following: NSO for oil and gas leasing, closed to private and commercial harvest of woodland products, unavailable for disposal of mineral materials, recommended for withdrawal from mineral entry and management as a ROW avoidance area.

Additionally, cultural resources in the Alkali Ridge ACEC are protected by law, regulation, and policy. Burial sites, associated burial goods, and sacred items are protected in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Should National Register-eligible cultural resources be found during an inventory, impacts to them will generally be reduced by cultural site avoidance (PRMP/FEIS at 2-10 (Table 2.1)). If the BLM determines that cultural resource sites cannot be avoided, the BLM will initiate consultation with the State Historic Preservation Officer (SHPO) to develop a program for mitigation based on agreed upon stipulations after consultation between Monticello FO, the SHPO, and the Advisory Council on Historic Preservation, as necessary.

In light of the variety of protections in place to preserve cultural resources in the PRMP/FEIS, the BLM has adequately complied with the requirements of Section 110(f) of the NHPA.

National Register of Historic Places Nominations

Issue Number: PP-UT-MONTICELLO-08-0006-6
Protester: Owen Severance

Issue Excerpt Text:

Section 8130.21D states that the RMP will (a)locate all cultural properties in the RMP area, whether already recorded or projected to occur on the basis of existing-data synthesis, to one or more of the following uses according to their nature and relative preservation value. Those categories are: Scientific use, Conservation for Future Use, Traditional Use, Public Use, Experimental Use, or Discharged from Management. This has not been done in the proposed RMP. There is no discussion of which cultural sites are placed in which cultural use categories. Instead, the RMP states in the "Summary Table of the Proposed Plan and All Alternatives" on page 2-10, the section titled "Management Common to the Proposed Plan and All Draft Alternatives" that: Cultural resources would be evaluated according to National Register criteria (36 CFR Part 60.4) and assigned to appropriate use categories as the basis for management decisions. And: Cultural sites, including ethnographic properties, would continue to be allocated to one of six management use categories: experimental, discharged from management, public, scientific, traditional, and conservation. The existing RMP (1991) placed cultural resources in use categories. These allocations should have been updated in the proposed RMP because they are out of

date. On page 2-10, in the "Summary Table of the Proposed Plan and All Alternatives" on page 2-10, the section titled "Management Common to the Proposed Plan and All Draft Alternatives" contains the following item: Priority geographic areas for new field inventories pursuant to Section 110 of the National Historic Preservation Act (NHPA) and Section 14 of the Archaeological Resources Protection Act (ARPA) would be identified based on a probability for unrecorded important resources. These inventories would be conducted as funding is available and as opportunities arise. This prioritizing was supposed to have been done before the plan was written as required by Section 8130.02: (b) identify priority geographic areas for new field inventory, based upon the probability of unrecorded significant resources.

Issue Number: PP-UT-MONTICELLO-08-0015-23
Organization: National Trust for Historic Preservation
Protester: Ti Mays

Issue Excerpt Text:

Second, the Proposed RMP fails to identify which areas BLM would prioritize for inventory and lacks a schedule for completing the inventories, Section 14 of the Archaeological Resources Protection Act (ARPA) is unequivocal here-BLM must develop a plan and schedule for "surveying lands that are likely

to contain the most scientifically valuable archaeological resources, , .." 16 USC § 470mm. The Proposed RMP's vague allusion to identifying areas in the Monticello Field Office for future inventory in no way satisfies the discrete requirements of Section 14. Thus, BLM errs to the extent it asserts compliance with Section 110 of the NHPA in part by satisfying Section 14 of ARPA.

Issue Number: PP-UT-MONTICELLO-08-0017b-6
Organization: Southern Utah Wilderness Alliance et

al.

Issue Excerpt Text:

Without first completing cultural resource surveys for each ORV area and trail that it proposes to designate in the plan, BLM lacks critical information on which to base ORV area and trail designation decisions, and the resulting PRMP is not in compliance with NEPA's hard look requirement, the NHPA (Sec. 106), and FLPMA's UUD and minimization mandates.

Summary

The BLM did not fulfill its responsibilities under Section 110 of the NHPA because appropriate properties are not identified and prioritized for nomination to the National Historic Register, nor does the BLM commit to do so in the future.

Response

The BLM integrates the protection of cultural resources with its responsibilities for land use planning and resource management under FLPMA to ensure that the affects of any activity or undertaking is taken into account when developing land use plans. In addition, an inter-agency National Programmatic Agreement, serves as the basis for the BLM's compliance with National Historic Preservation Act, and is the procedural control for BLM managers to meet their responsibilities under Section 106, and 110. Until 1980, Section 106 of the NHPA required agencies to consider the effects of their undertakings only on properties listed on the National Register of Historic Places. However in 1980, Section 106 was amended to require agencies to "...take into account the effect of the undertaking on any site, building,...that is included in or eligible for inclusion in the National Register." Since that time the BLM, through its land use planning process, outlines specific management prescriptions and mitigation measures to protect sites both listed in and eligible to be listed in the National Register. Any potential surface disturbing activities based on future proposals will require compliance with Section 106 and site-specific NEPA documentation.

The BLM's position remains that National Register nomination is done on a site-specific basis and does not require a land use plan decision. For this reason, the prioritization of National Register nominations has been removed from the PRMP/FEIS. Nomination of properties in the RMP would unnecessarily constrain future management opportunities. Notwithstanding the perception of opponents, future designations will be in conformance with the PRMP. However, if an RMP does contain a specific list of nominations, future proposals to nominate properties not on that list would indeed not be in conformance. Proactive Section 110 cultural surveys are taking place on a case-by-case basis.

Validity of Statistical Sample

Issue Number: PP-UT-MONTICELLO-08-0002-5
Organization: Utah Rock Art Research Association
Protester: Steve Robinson

Issue Excerpt Text:

The RMP decision-making process regarding cultural resources was made with inadequate information regarding the location and nature of cultural resources in the area. "Less than 10% of the area has been subjected to detailed cultural inventories." (RMP 3-13) In fact, the Monticello RMP specifically notes that "there are still large areas for which there is no current information regarding the numbers, types, and distribution of cultural resources." (RMP 3-18) This lack of knowledge indicates the BLM's lack of consideration for their responsibilities under the National Historical Preservation Act. The use of a flawed computer model to estimate the location of cultural resources results in inadequate protection to the actual location of cultural resources. A good management plan must be based on facts. This RMP is not.

Response

The requisite level of information necessary to make a reasoned choice among the alternatives is based on the scope and nature of the proposed action. In preparing the PRMP/FEIS, the BLM used the best available information to form the basis for the cultural resources analysis. This baseline data is a result of Section 106 and 110 inventories of the area and represents the volume of information available. Based on the professional knowledge and experience of BLM specialists, the BLM determined that sufficient information on the nature and extent of the direct, indirect and cumulative effects associated with the alternatives were known to form the basis of the analysis. In addition, substantive comments received concerning cultural resources were considered and addressed, as appropriate. Any potential surface disturbing activities based on future proposals will require compliance with Section 106 and site-specific NEPA documentation.

Fish, Wildlife, Plants, Special Status Species
Special Status Species

Issue Number: PP-UT-MONTICELLO-08-0018-68

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

In the RMP, BLM ignores impacts to T&E species from livestock grazing which can directly alter habitats for T&E, Utah and BLM-sensitive species and Conservation Agreement species. The PRMP provides no standards or criteria to provide protection to these species from impacts of OHVs, livestock grazing, minerals, oil and gas and their associated habitat alterations. The RMP should be designed with sufficient restrictions, closures, standards and numerical criteria to prevent this situation. Furthermore, BLM should be acting proactively to protect habitats for these species instead of relying on vague prescriptions and BMPs that lack teeth. Because livestock trample and degrade riparian habitats and consume riparian vegetation, including willows, the same surface disturbing activity controls should apply to grazing as to other surface-disturbing activities.

Response

The BLM has completed Section 7 consultation with the FWS, and has received a Biological Opinion, which concludes that implementation of the plan is not likely to jeopardize the continued existence of any listed species, including the ones cited in the protest. Resource Protection Measures, such as conservation and recovery plans, for special-status species are identified in Appendix Q. Protective measures are identified and referenced as stipulations and operating procedures. The impacts of livestock grazing decisions on special-status species are discussed in the PRMP/FEIS at Section 4.3.15.3.5. Protective measures are identified in the Proposed RMP at 2-21, 2-31, 2-73, 2-78, 2-82, and 2-83. Specific standards and criteria to

provide protection for special status species can also be found in the appendices of the proposed plan:

- Stipulations applicable to oil and gas leasing and other surface-disturbing activities are found in Appendix A. There are detailed protective measures for Gunnison Sage-grouse (PRMP/FEIS at A-10), Mexican spotted owls, Bald eagles, Southwestern willow flycatchers and Yellow-billed Cuckoos, Endangered Colorado River fishes, California condor, and Navajo Sedge (PRMP/FEIS at A-13 to A-22).
- In Appendix B, there is a list of resource protection measures for special status species as they relate to fire management activities (PRMP/FEIS at B-7).
- Appendix M is the Best Management Practices for Raptors and Their Associated Habitats in Utah. This BMP will be used to guide the management, protection, and habitat enhancement of the raptors found within the field office area.
- In Appendix Q, as part of the proposed action, the BLM has included conservation measures to minimize or eliminate adverse impacts to federally listed species.

BLM's Management Responsibility for Wildlife Habitats

Issue Number: PP-UT-MONTICELLO-08-0010-10

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

The County is very concerned that the BLM has apparently abrogated their responsibility for wildlife habitats to the Utah Division of Wildlife Resources (UDWR). This concern is supported by the fact that BLM has adopted in totality the UDWR recommendations without the benefit of biological and scientific confirmation by the BLM. It is further supported by BLM's response to The County's concerns as noted in Response to Comments page 136 comment 7-13 WL, page 156 comments 7-60 WL, 7-61 WL, and 7-62 WL "The UDWR is the jurisdictional agency for wildlife management within the State. This is also found throughout the PRMP such as page 2-83, page 3-178, page 3-179, and page

4-744. While it is understood that the States were given authority to manage wildlife including setting hunting and fishing regulations, the management of the habitat was clearly the responsibility of federal agencies. The BLM cannot abrogate this responsibility to anyone else.

Issue Number: PP-UT-MONTICELLO-08-0010-14

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

Once again BLM has abrogated their habitat responsibilities to the UDWR as indicated on page 2-83 Table 2.1 Summary last item Habitat Boundaries which states "Minor adjustments to crucial wildlife habitat boundaries periodically made by the UDWR would be accomplished through plan maintenance."

Summary

The BLM has abrogated its responsibility for wildlife habitats to the Utah Division of Wildlife Resources (UDWR).

Response

See response to protest issue 7.2.1. The UDWR is the jurisdictional agency for wildlife management within the State. As such, the BLM relied primarily on the expertise and data of this agency for delineating wildlife habitats, estimating population numbers, and recommending wildlife restrictions. However, the BLM made all decisions as to the management prescriptions to be employed within these delineated habitats in the Monticello PRMP/FEIS. The BLM has abrogated no responsibilities in recognizing UDWR's expertise and jurisdiction by law.

Management Prescriptions for Sage Grouse

Issue Number: PP-UT-MONTICELLO-08-0010-18

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

the final RMP /ROD should clarify the sage grouse prescriptions, as they are not consistent throughout the document. On page 2-74 it specifies a 4 mile CSU buffer May 16 - March 19, which should be changed to March 19 - May 16, which would make it consistent with Table 2.2, pages 2-173 - 2-174. In appendix A page A-10, there are no dates for the CSU stipulation, indicating that it would be available year round. This should be corrected.

Issue Number: PP-UT-MONTICELLO-08-0011-26

Organization: IPAMS

Protester: Kathleen M. Sgamma

Issue Excerpt Text:

In addition, the final RMP /ROD should clarify the sage grouse prescriptions, as they are not consistent throughout the document. On page 2-74 it specifies a 4 mile CSU buffer May 16 - March 19, which should be changed to March 19 - May 16, which would make it consistent with Table 2.2, pages 2-173 - 2-174. In appendix A page A-10, there are no dates for the CSU stipulation, indicating that it would be available year round. This should be corrected.

Summary

The sage grouse prescriptions are not consistent throughout the document.

Response

The protesters are correct. The sage grouse prescriptions in the Monticello PRMP/FEIS are not consistent. The 10-month prescription described in Table 2.2 of the Monticello PRMP/FEIS is erroneous. Rather, the year-round prescription in Appendix A, on page A-10, is the correct stipulation. These items will be clarified in the ROD.

Mule Deer Impacts to Sagebrush Habitat

Issue Number: PP-UT-MONTICELLO-08-0010-6

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

3.20.2.1 Mule Deer on page 3-178 needs two further corrections. In the first paragraph the sentence "Winter range habitat primarily consists of shrub-covered, south-facing slopes." is repeated twice. In the last paragraph the sentence which states "Within the Monticello PA, there has been a loss/die-off of sagebrush habitat due to overgrazing drought and insect infestations" is incorrect or misleading. The term overgrazing carries the connotation of livestock and is not associated with deer or wildlife. BLM should correct this to clearly show that the sagebrush die-off is caused by deer over-browsing/grazing.

Response

The protester is correct and we have removed the redundant sentence, "Winter range habitat primarily consists of shrub-covered, south-facing slopes," from Section 3.20.2.1. This is a typographical error that does not affect the analysis or decisions. On the second point regarding overgrazing, this sentence was intended to describe the effects of grazing due to livestock as well as wildlife browsing. This item will be clarified in the ROD.

Migratory Birds

Issue Number: PP-UT-MONTICELLO-08-0018-20

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

In spite the brief mention, Migrant birds are not effectively addressed in violation of NEPA, FLPMA and Executive Order 13186 requiring a memorandum of understanding with the Fish and Wildlife Service and to consider the effects that planned or authorized activities will have on migratory birds and their habitats and to consider migratory birds in their land use planning efforts. No analysis was presented considering effects of livestock grazing and trampling, OHVs and other uses, habitat fragmentation from vegetation treatments and infrastructure, including range improvements.

Response

Migratory birds are adequately addressed in chapter 4 of the PRMP/FEIS. See generally Section 4.3.19 at pages 4-687 through 748. Table 4.241 in this section provides the habitat associations for wildlife species, including neotropical (migratory) birds. Most effects are discussed in terms of impacts to specific habitats, because the impacts to wildlife from activities on public lands are generally the result of habitat modification, alternation, or fragmentation. Vegetation-altering projects will be avoided during the nesting season under all alternatives. The impacts of habitat fragmentation to migratory birds are discussed in Section 4.3.19.3.21.

When taking action to implement the Proposed Plan, the BLM will, in accordance with Executive Order 13186, incorporate conservation measures for the protection of migratory birds, as outlined in the Utah Partners-In-Flight Avian Conservation Strategy and other scientific information, into all surface-disturbing activities (see PRMP/FEIS at 2-82). The PRMP/EIS is also in compliance with BLM IM 2008-50 Migratory Bird Treaty Act – Interim Management Guidance (*Id.*; also see PMFP/FEIS at 4-121).

Adherence to the Migratory Bird Treaty Act and Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds" will have beneficial impacts on migratory birds including priority species identified on the current USFWS Birds of Conservation Concern list (2002 and as updated) and the Partners-in-Flight priority species list (as updated). The use of adaptive management strategies will more effectively conserve habitat and avoid impacts to these species. Avoidance of surface-disturbing activities and vegetation-altering projects, including broad-scale use of pesticides, during nesting season (May 1-July 30) will reduce adverse impacts on birds and their nesting habitats in the Monticello PA in the short-term. In the long-term vegetation-altering projects may improve habitat by providing more food sources and/or cover for birds or by helping to reduce fire risk. Further, the prioritization of habitat types most commonly used by migratory birds (lowland riparian, wetlands, and low and high desert shrub) for maintenance and improvement will increase the availability of high-quality habitat and reduce the adverse impacts of invasive plants (e.g., cheatgrass, tamarisk, Russian olive). Finally, in the Coordinated Implementation Plan for Bird Conservation in Utah, several Bird Habitat Conservation Areas were identified that will receive priority bird habitat conservation projects through cooperative funding initiatives that will benefit bird species.

Lands and Realty

Issue Number: PP-UT-MONTICELLO-08-0017b-40

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Further, the PRMP states, “[n]umerous old airstrips located throughout the resource area on BLM, State, and private lands” will be open for use. PRMP at App. N N-27. However, the PRMP does not include an analysis of the impacts on WSAs, non-WSA lands with wilderness character, recreationists, and natural and cultural resources. As noted above with respect to route designations in closed areas, BLM must supplement its analysis to consider the impacts of this decision before the ROD is issued.

Response

The protesting party is correct that the BLM failed to analyze the impacts of remote airstrips in the Monticello planning area on WSAs and non-WSA lands with wilderness characteristics, recreationists and natural and cultural resources in the PRMP/FEIS. The BLM has reviewed its administrative record and found that comments submitted in February 2008 (during the comment period for the DRMP/DEIS) include recommendations for analyzing the impacts of open backcountry airstrips on the resources in the planning area. Because the BLM did not analyze such impacts the BLM Monticello Field Office will be required to withdraw the any decision in the PRMP/FEIS relating to remote or backcountry airstrips. This modification will be identified in the ROD and reflected in the Approved RMP. In order to remedy this oversight, the impacts of these numerous airstrips on the resources in the planning area will be considered at the earliest opportunity as part of the next planning process conducted by the Field Office (the airstrip decisions in the No Action alternative will control until a new decision has been analyzed and confirmed). The BLM will delineate travel management areas for remote airstrips and determine which of these will be open or closed in compliance with the NEPA, Appendix C of the BLM Planning Handbook H-1601-1 and Public Law 106-291 Section 345.

Leasable Minerals

Reasonably Foreseeable Development Scenario

Issue Number: PP-UT-MONTICELLO-08-0017c-108

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

B. The RFD is inaccurate BLM must also modify its reasonably foreseeable development (RFD) scenario figures in the Monticello PRMP to accurately reflect historical rates of development. As SUWA demonstrated in its comments on the Monticello Draft RMP, the RFD rate is improperly high. As discussed above, the agency is required to use high quality data and methods for its analyses and also to respond to substantive comments; the inaccurate RFD must be corrected and BLM’s analysis updated. The PRMP completely ignored SUWA’s comments and recommendations in this regard. See BLM Response to Comments, sorted by Resource, at 100 of 378 (responding only to SUWA’s request that BLM consider the no leasing alternative). SUWA’s comments pointed out how this RFD scenario was improperly inflated and that an accurate assessment of oil and gas potential would allow for significant protections in the western half of the planning area while still allowing for oil and gas development at rates comparable to the historic rates of development in the planning area. SUWA now repeats and reiterates all of its comments provided to BLM regarding its RFD scenarios. See SUWA, Comments on Monticello Draft RMP at 68-74 (Feb. 2008). BLM must rework its RFD scenarios to match geological potential and historic trends.

Response

The PRMP/FEIS did not respond to SUWA's comments specifically; however, responses to substantially similar comments regarding the accuracy of the RFD can be found to comments 35-5, 62-75, and 221-4. The RFD is in fact based on historic data as the comment suggested, but it also considered projected economic trends and advances in technology. The RFD predicts new development as well as continued production from existing fields. Of course, the BLM recognizes that there will be a greater degree of predictive uncertainty associated with estimates of new discoveries. The BLM used the best available data in the preparation of the RFD, including BLM experience, production information, new permitting, geologic information, and economic data. This information was gathered from BLM experts, industry professionals, the EPCA Oil and Gas Inventory Report, the Utah Division of Oil, Gas, and Mining, and the Utah Geological Survey. The RFD was prepared in compliance with Washington Office Instruction Memorandum 2004-89.

Livestock Grazing Baseline data and Local Conditions

Issue Number: PP-UT-MONTICELLO-08-0007-10
Organization: Ecos Consulting
Protester: Charles Schelz

Issue Excerpt Text:

It is not apparent the BLM has actually looked at the provisions of subpart 4180, "The Standards for Rangeland Health" because it would be very difficult to find any allotments in the Monticello Decision Area that conform to these. The impacts from livestock grazing have not been adequately addressed in this PRMP/FEIS, which makes the decision to allow livestock grazing arbitrary and capricious.

Issue Number: PP-UT-MONTICELLO-08-0017c-75

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

To begin, the PRMP/FEIS does not identify local

conditions on each grazing allotment. Appendix D, which provides the only complete list of the individual grazing allotments, completely lacks any reference to, let alone any assessment of the conditions of, particular riparian, cultural, soil, or vegetation resources existing upon those allotments. At best, the PRMP/FEIS notes the occurrence of these other resources as a percentage of the total acreage in the Monticello PA. For example, the PRMP/FEIS states at page 3-101 that riparian resources occur on 1.6% of the total planning area. Yet, without an indication of where these resources overlap with grazing allotments, this numerical data is useless in a site-specific analysis of grazing impacts. Since the PRMP/FEIS fails to clarify where fragile resources intersect with grazing allotments (a likely scenario given the richness of the lands within the Monticello PA), the BLM has not complied with the first part of the NEPA requirement in the context of grazing.

Summary

The PRMP/FEIS does not identify local conditions on each grazing allotment. The BLM has not considered the provisions of Subpart 4180, "The Standards for Rangeland Health" because it will be very difficult to find any allotments in the Monticello planning area that conform to these.

Response

Livestock grazing decisions at the planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. According to BLM policy, decisions regarding authorized livestock use, levels and the terms and conditions under which

they are managed are implementation decisions (H-1610-1, Appendix C, page 15). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates these data on a periodic basis, normally on an allotment and/or watershed basis. After NEPA analysis, changes to livestock management deemed necessary to meet or progress toward meeting management objectives and to conform to Utah's *Guidelines for Rangeland Management* are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance land health. In light of this process for making subsequent site-specific grazing decisions, the baseline information disclosed in the FEIS is sufficient to support the administrative record for this RMP and the broad-scale decisions concerning grazing that are made at the planning level.

The BLM takes into full consideration all applicable regulations, including Subpart 4180 – *Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration* in determining rangeland condition on an allotment basis. Livestock management decisions are typically made by the Field Office on an allotment-specific basis and are part of the implementation of an RMP to assure that Rangeland Health Standards and other objectives of the RMP are met. The collection of monitoring data, including evaluations of Standards for Rangeland Health, is a continual process on an allotment scale that will be carried forward beyond finalization of the RMP. This allotment-scale decision process enables the BLM to analyze and implement site-specific decisions that provide for sustainable resource protection and utilization through focused evaluation of potential environmental impacts associated with livestock grazing. These implementation level decisions will be in conformance with the goals and objectives of the Approved RMP, and must protect and/or enhance resource conditions and uses of the BLM lands.

Analysis of Grazing Related Impacts

Issue Number: PP-UT-MONTICELLO-08-0017c-67

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Of course, the PRMP/FEIS notes its adherence to the Comb Wash decision by closing a portion of the Comb Wash allotment to livestock grazing at page 3-53. Yet, the PRMP/FEIS otherwise completely disregards NEPA and FLPMA compliance on the remaining allotments within the Monticello PA. These remaining allotments which are available for livestock grazing account for 93% of the total acreage within the Monticello PA. The vast majority of these allotments share similar environmental, physical, cultural, and aesthetic characteristics with the Comb Wash allotment. By failing to implement the necessary NEPA and FLPMA requirements on this overwhelming percentage of the Monticello PA with similar attributes to the Comb Wash allotment,

the BLM is essentially duplicating the factual record that led to the Comb Wash litigation. The PRMP/FEIS nearly guarantees future litigation because the BLM has authorized livestock grazing on the majority of the Monticello PA without first discharging its statutory duties under NEPA and FLPMA.

Issue Number: PP-UT-MONTICELLO-08-0017c-72

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

As discussed in the previous section, legal authority clearly dictates that the BLM analyze both the local conditions on the allotments and the impacts of livestock grazing upon these conditions prior to a decision to authorize grazing on public lands. The PRMP/FEIS lacks both of these required components. First, the PRMP/FEIS does not assess

the condition of the specific riparian, cultural, soil, or vegetation resources that occur on each individual allotment. Second, the PRMP/FEIS does not assess the environmental impacts of livestock grazing upon these specific resources.

Issue Number: PP-UT-MONTICELLO-08-0017c-77

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

For instance, the PRMP/FEIS avoids any significant discussion of adverse grazing impacts upon riparian areas by noting at page 4-403 that “proper herd management would provide long-term protection and enhancement of riparian areas” and “proper grazing practices would ensure protection of riparian areas through maintenance of vegetative cover leading to riparian area health.” It is important to note that the grazing practices employed on the Comb Wash allotment prior to the Comb Wash decision were “proper” by BLM’s standards, yet as discussed above, they still had enormous environmental impacts. But the PRMP/FEIS’s only mention of adverse impacts to riparian resources is attributed to drought conditions, without any concession that grazing contributes to degradation of riparian resources in the first place. While extensive literature exists documenting the significant and irreparable harm of grazing to fragile riparian areas, the PRMP/FEIS fails to address any such harms. Furthermore, the PRMP/FEIS closes only 2,800 acres of riparian area to grazing while leaving open to grazing 17,200 acres of riparian area. This gross disparity reflects a complete disregard for the substantial adverse impacts of livestock grazing on riparian resources.

Issue Number: PP-UT-MONTICELLO-08-0017c-78

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Likewise, the PRMP/FEIS avoids any significant discussion of how livestock grazing adversely affects soil resources. The PRMP/FEIS only indirectly hints at these adverse impacts by stating at page 4-458 that a reduction in AUMs will increase ground cover and soil productivity. Otherwise, the PRMP/FEIS fails to discuss the types and conditions of soils, rates of erosions, and grazing impacts on any particular allotment. The fact that the acreage of “limited soils” open to grazing remains constant among all of the alternatives shows a complete lack of attention to grazing impacts on the more fragile soils. Table

4.126 on page 4-459 reflects this disregard. The numbers show that the bulk of lands with wind, water and reclamation-limited soils remain open to grazing, yet the PRMP/FEIS fails to assess the impacts of grazing on these soils in any specific locations within the planning area.

Issue Number: PP-UT-MONTICELLO-08-0017c-79

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP/FEIS’s treatment of grazing impacts on other resources such as cultural resources (page 4-46), paleontological resources (page 4-303), and non-WSA lands with wilderness characteristics (page 4-196) is equally deficient. With respect to cultural resources, the PRMP/FEIS notes “potentially adverse” trampling effects by livestock, but it still keeps 90% of high site-density and 93% of medium site-density lands open to grazing without any assessment of the impacts of livestock grazing on any of these sites. As to non-WSA lands with wilderness characteristics, the PRMP/FEIS dares to state at page 4-196 that with proper grazing practices, “it is not anticipated that livestock grazing would have impacts on the natural characteristics of the non-WSA lands with wilderness characteristics” because following these practices “would maintain healthy vegetation communities and watershed condition on the land.” This unsupported assertion is completely contrary to Judge Rampton’s findings, in the Comb Wash decision, that livestock grazing was having enormous impacts on the natural characteristics of the lands on the Comb Wash allotment. The BLM offers no reason to believe that grazing is not having, and will not have, similar impacts on the natural characteristics of the lands in other grazing allotments within the planning area.

Issue Number: PP-UT-MONTICELLO-08-0017c-80

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In its discussion of grazing impacts on recreation resources in the Monticello PA, the PRMP/FEIS does list specific types of adverse impacts to recreational users, but it fails to assess the extent of such impacts in particular grazing allotments. Instead, the PRMP/FEIS simply assures recreational users that proper grazing practices will reduce the disruptions of livestock grazing. This assurance is unsupported by any evidence or analysis. It is also illogical since “proper” grazing practices are rarely, if ever,

designed to lessen impacts on recreationists. See Joseph M. Feller and David E. Brown, From Old-Growth Forests to Old-Growth Grasslands: Managing Rangelands for Structure and Function, 42 ARIZ. L. REV. 319, 330-31 (2000). In sum, the PRMP/FEIS lacks the actual site-specific and grazing-specific analysis necessary to comply with NEPA in the context of livestock grazing.

Issue Number: PP-UT-MONTICELLO-08-0017c-86

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Unfortunately, this PRMP/FEIS repeats the errors highlighted by the Comb Wash decision. Since the PRMP/FEIS fails to assess the relative resource values prior to authorizing grazing on the 74 allotments in the Monticello PA, the BLM has again ignored its FLPMA duty. In particular, the PRMP/FEIS does not evaluate the contribution that grazing each allotment makes to the local economy and does not attempt to compare that contribution

with the value of scenic, recreational, ecological, or cultural resources on the allotment. Furthermore, the PRMP/FEIS fails to explain why grazing continues on I category allotments where “serious resource use conflicts” exist and C category allotments where “low resource production potential exists.” See PRMP/FEIS Appendix D. These classifications imply not only that other resources exist on these allotments, but that these other resources may have a greater value than grazing on the allotments. Regardless of this implication, the BLM fails to inquire into the relative resource values on the I and C category allotments and instead simply opens them to grazing.

Issue Number: PP-UT-MONTICELLO-08-0018-63

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

was no analysis of the role of livestock in degradation of water quality, or the role of range improvements in degradation of water quality and quantity, loss of wetlands and impacts to wildlife in the RMP.

Summary

The PRMP/FEIS fails to adequately address the impacts of livestock grazing on cultural resources. By failing to implement the necessary NEPA and FLPMA requirements on this overwhelming percentage of the Monticello planning area with similar attributes to the Comb Wash allotment, the BLM is essentially duplicating the factual record that led to the Comb Wash litigation.

Response

Allotment-specific evaluations are not an appropriate level of analysis for inclusion in an RMP. The PRMP/FEIS implements landscape level decisions regarding general allocations and the uses provided for on BLM lands. Allotment-specific evaluations are conducted when grazing permits are to be renewed or when monitoring indicates a change in grazing practices are needed. These evaluations and associated decisions to renew or modify grazing permits in compliance with the goals and objectives of the PRMP/FEIS and other activity plan resource objectives are implementation level decisions. These decisions will rely on site specific NEPA analysis conducted on an allotment or watershed basis and will be issued under the grazing regulations at 43 CFR § 4160. The Comb Wash ruling does not pertain to landscape-level RMP planning process, but rather to site specific analyses such as the renewal and issuance of permits.

Monitoring Data for Livestock Management Decisions

Issue Number: PP-UT-MONTICELLO-08-0017c-93

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

9. Since the PRMP/FEIS Asserts that BLM Monitoring Data Will Sufficiently Inform Grazing Management Decisions on Allotments, the PRMP/FEIS Fails to Comply with the FLPMA Requirement for Reasoned and Informed Decision-making The PRMP/FEIS states at page 4-86 that rangeland monitoring data will inform the BLM's rangeland management decisions. The data will be used to change to livestock grazing levels as needed to meet resource objectives, restore rangeland health, and maintain sustainable livestock levels. However, monitoring studies narrowly address the availability of forage. They do not concern or directly measure other environmental impacts such as soil erosion, loss of soil nutrients, or water pollution. See Joseph M. Feller and David E. Brown, From Old-Growth Forests to Old-Growth Grasslands: Managing Rangelands for Structure and Function, 42 ARIZ. L. REV. 319, 334-35 (2000). The BLM's monitoring studies also do not measure the condition of wildlife habitat, archaeological resources, or recreational resources. Moreover, monitoring often informs management decisions when it is "too late" because the studies fail to detect changes in rangeland conditions from prior to the study period to the point of monitoring. Id. Often the environmental degradation has progressed too far by this point and simple changes in allotment management will not suffice to correct the conditions. Lastly, monitoring studies are inadequate to inform management decisions because they are too limited in spatial scope. Due to a limited number of sample locations spread over a very large and diverse allotment, it is often inaccurate to infer larger trends regarding the rangeland health from the samples. Id. "Grazing impacts typically vary dramatically from place to place within an allotment, depending on distance to water, terrain features, slope, elevation, exposure, soil type, and pasture movements." Id. at 335. Judge Rampton noted the shortcomings of monitoring data as well in the Comb Wash decision. He pointed out that "trend data . . . cannot reliably or accurately, measure the following impacts of grazing: soil erosion, reduced water infiltration and increased surface runoff due to soil compaction and loss of vegetative cover, trampling and erosion of streambanks, degradation of stream channels, trampling of archaeological sites, contamination of archaeological sites with cattle manure and urine, and degradation of wildlife habitat." Nat'l Wildlife Fed'n v. BLM, No. UT-06-91-1, 25 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993). Therefore, the BLM's decision in this PRMP/FEIS to rely on monitoring data as the sole indicator for adjusting livestock grazing levels without considering additional environmental impacts of grazing is neither reasoned nor informed. In addition, the reliance on forage-specific monitoring data does not square with FLPMA's overarching requirement to balance relative resource values prior to any decisions to authorize grazing on public lands

Response

The BLM follows set protocol and relies on various monitoring data to make informed livestock management decisions. BLM monitoring accounts for a wide range of environmental factors and employs various techniques to collect information about weather, achievement of proper functioning riparian condition and of Standards for Rangeland Health evaluations (which assesses 17 indicators for soil stability, hydrologic function, and biotic integrity), forage utilization levels, vegetative trend, actual livestock use and various other important resource and resource use attributes. Analysis, interpretation and evaluation of these data support site-specific decisions that authorize management practices intended to provide for sustaining resources while also providing for livestock grazing. Livestock management decisions are typically made by the Field Office on an allotment-specific basis and are part of the implementation of an RMP to assure that Rangeland Health Standards and other objectives of the RMP are met. These implementation level decisions will be in conformance with the goals and objectives of the RMP, and must protect and/or enhance resource conditions and uses of the BLM lands.

Recreation and Visitor Services

Special Recreation Management Areas Acreage Amounts

Issue Number: PP-UT-MONTICELLO-08-0017c-51

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

1. BLM has not responded to comments leaving errors in the PRMP in need of correction. In comments provided to the BLM on the Draft RMP, we recommended the BLM correct errors in the recreation section that may lead to confusion among the public. Our comments stated the following: As an initial matter, there are several discrepancies between the total acreage provided in the summary of SRMAs on page 2-3 and the actual total acreage as added up in each of the alternatives. The following specific inconsistencies need to be corrected in the proposed final RMP, both in describing the SRMAs and responding to comments: (1) SRMA Actual Acres; (2) SRMA Summary on p. 2-3; (3) Difference between Summary and Actual. (Canyon Basin SRMA-214,390 acres- not included in the summary for Alt. A.) Alt. A(1) 229,490 (2) 15,100 (3) -214,390 Alt B(1) 508,856 (2) 528,856 (3) 20,000 Alt C(1) 508,512 (2) 525,512 (3) 17,000 Alt D(1) 505,018 (2) 525,018 (3) 20,000 Alt E(1) 508,856 (2) 528,856 (3) 20,000 SUWA Comments on Draft RMP at 74. The PRMP does not contain a direct response nor were any changes made in the plan to address these errors. BLM was required to address this comment and correct these discrepancies before issuing the PRMP. Furthermore, in the PRMP, BLM continues to make errors in summary of SRMA acreage by showing the proposed alternative with a total of 554,721 acres. PRMP at 2-4, Summary Table B. The true total acreage according to other sections of the PRMP is 562,824 acres. PRMP at 2-29 – 2-23, Table 2.1; PRMP at 4-338, Table 4.116. Thus, there is an 8,103 acre discrepancy for total SRMA acreage between two sections of the PRMP. It is clear that BLM has ignored our comments on this point and because of this, continues to make careless errors in summarizing management decisions, failing utterly to provide clear and accurate information as required by NEPA. The incomprehensibility of the information provided in both the Draft RMP and the PRMP substantially interferes with the ability of reviewers to effectively comment in further violation of NEPA.

Response

The Southern Utah Wilderness Alliance et al. is correct that there is a discrepancy in the Special Recreation Management Area (SRMA) acreages. The correct figure for total acres in SRMAs is 562,824. This will be corrected in the ROD. This error, however, has no impact on the analysis or conclusions in the PRMP/FEIS.

Tank Bench and Beef Basin Special Recreation Management Areas

Issue Number: PP-UT-MONTICELLO-08-0017c-53

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

2. BLM must provide a supplemental EIS for the new alternative presented for Tank Bench and Beef Basin SRMAs. Both the Tank Bench and Beef Basin SRMAs were not included in the alternatives for the Draft RMP. Instead, these areas were proposed to be designated as cultural special management areas. Draft RMP at 2-9 – 2-10. Thus, the goals and objectives for management of these areas has shifted significantly from cultural values to recreation values with little explanation as to why. The decision to shift the focus of management from cultural to recreation is of particular concern for the Beef Basin area. The PRMP specifically names the Dark Canyon-Beef Basin area as one of the seven areas where “OHV designations need to be addressed due to a variety of resource use conflicts.” PRMP at 3-166. The PRMP goes on to state, “[t]hese conflicts have the potential to bring harm to users as well as the resources potentially impacted. At the very least, user conflicts may potentially degrade user satisfaction.” Id. The PRMP describes the impacts from not designating Tank Bench and Beef Basin for cultural resources (Alternative D) as follows: The Comb Ridge/Butler Wash, the Tank Bench, and Beef Basin areas would not be managed as CSMAs. Because fewer acres of high site-density areas are designated for special management of cultural resources, the opportunities for long-term benefits would be reduced, and the risk that cultural resource sites in these areas could be impacted would increase. PRMP at 4-53. Yet these same impacts would occur and perhaps even intensify if these areas are designated and managed with a focus on recreation. This is especially true in Beef Basin where the area will be open to ORV use and there are already known conflicts that exist from such use. Management for recreation instead of for cultural resources in a high site-density area is a significant change in focus from the Draft RMP to the PRMP. The public should have the opportunity to comment on this before the record of decision is issued. The regulations implementing NEPA require a supplemental environmental statement when “(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c). In addition, BLM must supplement the EIS when the agency adds “a new

alternative that is outside the spectrum of alternatives already analyzed.” See BLM NEPA Handbook H-1790-1 at 29; see also Question 29b, CEQ, *Forty Most Asked Questions Concerning CEO’s NEPA Regulations*, March 23, 1981.

Response

According to the Council on Environmental Quality, NEPA requires a supplemental EIS if, prior to final agency action, the BLM (1) made substantial changes to the proposed action that are relevant to environmental concerns; (2) the BLM added a new alternative that is outside of the spectrum of those analyzed; or (3) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (See 40 CFR 1502.9(c)(1)(i); Question 29b, CEQ, *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations*, March 23, 1981; 40 CFR 1502.9(c)(1)(ii)). Substantial changes in the proposed action are considered changes that would result in significant effects outside the range of effects analyzed in the DEIS or FEIS (See National Environmental Policy Act Handbook, H-1790-1).

Both the Tank Bench and Beef Basin areas were analyzed in the DEIS alternatives as Cultural Special Management Areas (CSMAs). The CSMA was a new naming convention which proved to be confusing to the public so it was dropped in favor of the conventional designation of SRMA. No decisions have changed; they have just been moved over to the Recreation section under the SRMAs (PRMP/FEIS at 2-27). The goals and objectives of the SRMAs for these areas are to provide outstanding recreational opportunities and visitor experiences while protecting natural and cultural values. Management focus will be heritage tourism, traditional cultural values and scientific research of prehistoric cultural landscapes, which is the same focus the CSMAs. Additionally, the management prescriptions included in the CSMAs have been wholly utilized for the SRMAs. Since the same prescriptions and similar goals and objectives in the DEIS have been carried forward into the FEIS, this change will not result in significant effects outside the spectrum of impacts analyzed in the DEIS. Therefore this is not a substantial change and a supplemental EIS is not required under NEPA.

Travel Management Discussion of Impact Minimization

Issue Number: PP-UT-MONTICELLO-08-0017b-10

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

claiming that designating nearly 3,000 miles of route will minimize impacts to soils and water with no supporting analysis, fails the ORV regulations minimization requirement as well as NEPA’s hard look requirement.

Response

The Executive Orders, regulations, and policy requirements to minimize impacts must be understood in light of both a "rule of reason" and the multiple-use mandate. "Minimize" does not mean "reduce to zero." Designated routes were screened for impacts to sensitive resources. By limiting OHV use to designated roads and trails in most areas, along with closing some areas to OHV use, the BLM has minimized impacts while still providing an appropriate mix of uses of the public lands. See also response to Protest Issues 34.2 and 34.3.

Assessment of Off-Highway Vehicle Impacts

Issue Number: PP-UT-MONTICELLO-08-0015-15

Organization: National Trust for Historic Preservation

Protester: Ti Mays

Issue Excerpt Text:

The Proposed RMP fails to adequately assess the environmental consequences of OHV use on significant cultural resources in the Monticello Field Office. An EIS must analyze the direct impacts of a proposed action and the indirect impacts of past, present and reasonably foreseeable future actions. 40 C.F.R. § 1502.16(a), (b); Custer County Action Ass'n. v. Garvey, 256 F.3d 1024, 1035 (10th Cir. 2001). Additionally, an EIS must assess cumulative impacts, defined by the NEPA regulations as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.27(b)(7).

Issue Number: PP-UT-MONTICELLO-08-0017a-93

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In the context of the Monticello PRMP, the decisions made with regard to designation of ORV areas and trails and travel management are not fully analyzed as to the effects of those decisions on riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, wilderness character areas, wilderness study areas, and other users, as discussed below

Issue Number: PP-UT-MONTICELLO-08-0017b-14

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In particular, the PRMP fails to include any analysis of the impacts that ORV routes and ORV use have on vegetation and the spread of invasive weeds. The PRMP's "analysis" of the impacts of ORV area and route designations is limited to the following general statements: "The Proposed Plan would close 393,895 acres to OHV use, which is 117,465 acres (42%) more than under Alternative A," (id. at 2-174) and the proposed plan has "fewer associated adverse impacts to special status species and their habitat" than Alternative A." Id. at 2-162. These statements of acreage comparisons are not analysis, yet the PRMP contains nothing more.

Summary

The Monticello PRMP/FEIS did not fully analyze designation of ORV areas or trails and travel management with regard to the effects of those decisions on riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, wilderness character areas, wilderness study areas, and other users.

Response

The BLM has presented sufficient information and analysis to reach informed decisions concern the impacts of OHV use and travel management decisions on other resources, such as wildlife, riparian areas, air quality, vegetation and soils. This information and analysis is detailed in the PRMP/FEIS in Chapter 4 in the discussion of impacts to each resource, and summarized in Appendix N. These impacts are described at a level appropriate to a landscape-level analysis.

Minimizing Conflicts between Users

Issue Number: PP-UT-MONTICELLO-08-0017c-47

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM's ORV regulations require the agency to designate areas and trails for ORV use "to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors" (43 C.F.R. § 8342(c)), but the PRMP fails to take that into account in analyzing and selecting alternatives.

Response

The regulation and policy requirements to minimize impacts cited in the protest issue must be considered in light of both a "rule of reason" and the multiple-use mandate. "Minimize" does not mean "reduce to zero." Designated routes were screened for impacts to sensitive resources. By limiting OHV use to designated roads and trails in most areas, along with closing some areas to OHV use, the BLM has minimized impacts while still providing an appropriate mix of uses of the public lands.

Mapping of Roads Located on Non-BLM Lands

Issue Number: PP-UT-MONTICELLO-08-0008-9

Organization: Great Old Broads for Wilderness

Protester: Tim D. Peterson

Issue Excerpt Text:

We raised the issue that the BLM has no authority to manage or designate roads not located on BLM land in our DRPM comments, and requested that San Juan County mapped roads on NPS, FS, BIA, State and Private lands be removed from maps published by BLM. Though the response to comments section notes that the roads have been removed, this is not the case: "The roads in lands administered by the Park Service and Forest Service have been removed from the OHV and travel plan maps. The BLM is dealing with routes on their lands only. Both NPS and FS have had opportunity to review the BLM's travel plan designations." 10 All published travel plan maps, including those provided in GIS to us still contain roads in BLM, NPS, FS State and Private lands. Most troubling is that BLM maps still show roads that are closed by NPS, such as Salt Creek Canyon within the Needles area of the park.

Response

The BLM recognizes it has no authority to manage or designate roads not located on BLM lands. Roads other than federal and state highways shown on the OHV and Travel Plan map will be removed on NPS and USFS lands. Roads across state and private lands will not be removed as these ownerships are generally smaller parcels and removal of roads across these small parcels may lead to confusion for the public.

Off-Highway Vehicle Use within a 300-foot Corridor

Issue Number: PP-UT-MONTICELLO-08-0017a-79

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Significantly, BLM is not limiting ORV use to designated routes – the PRMP will allow cross-country travel within a 300-foot corridor of the designated routes to access dispersed camping areas. Id. at 4-243.11 BLM states, with absolutely no

supporting analysis, that this will "prevent expansion of surface disturbance that would degrade the natural characteristics of non-WSA lands with wilderness characteristics." Id. By allowing cross-country travel along a 300-foot wide corridor for 262 miles of route in the non-WSA lands with wilderness characteristics, BLM is effectively designating 9,527 acres in the WC lands as open ORV play areas. The PRMP completely fails to inform the public and to provide analysis for this decision, as required by NEPA.

Issue Number: PP-UT-MONTICELLO-08-0017b-28

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In addition, the PRMP includes a decision (although not prominently displayed in any of Chapter 2's tables discussing the various decisions and potential impacts, but rather deeply hidden in the dense text of Chapter 4) that will allow off-route, cross-country travel in a 300-foot wide corridor along all designated routes, with a few small areas excepted

from the general rule. See PRMP at 2-242. Thus, the 262 miles of designated routes within wilderness character areas will result in 9,527 acres of designated "open" area within the wilderness character areas. The PRMP fails to adequately disclose this information (the PRMP states that there are no "open" ORV areas in the proposed plan (PRMP at 2-76)) and fails to analyze the impacts from this decision, and the PRMP fails to present this decision in a way that the public can readily understand and comment on, in violation of NEPA's mandates. See 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

Summary

The 300-foot corridor along designated routes is a de facto "Open" ORV area, which is not disclosed or analyzed in the PRMP/FEIS.

Response

The term "300-foot wide cross-country corridor," grossly mischaracterizes the decision to allow off-road travel to campsites. As stated in Chapter 2 of the PRMP/FEIS, access will be allowed for 150 feet on either side of the centerline of designated routes and will be limited to existing disturbed dispersed campsites or for permitted wood gathering (see PRMP/FEIS at 2-41, 2-43, 2-126, and 2-86 to 2-88). Such site-specific decisions are not applicable across the planning area. For example, in Beef Basin SRMA, dispersed vehicle camping will be allowed within 150 feet of the center line of designated routes, but only in previously disturbed areas and only until primitive camping areas are designated. The access to such campsites is not considered equivalent to a motorized "open" area; cross country travel is not allowed to access campsites. Additionally, such use of existing disturbed campsites is still subject to other overriding stipulations in special designations. Areas where these overriding stipulations are in effect include Wilderness Study Areas (389,444 acres), non-WSA areas managed for wilderness characteristics (88,871 acres), Wild and Scenic River corridors, Areas of Critical Environmental Concern, and threatened and endangered or special status species habitats (PRMP/FEIS at 2-44).

The BLM will monitor campsite areas and, if use is such that undue environmental impacts are taking place, the BLM will close and rehabilitate damaged areas (PRMP/FEIS at 2-3). Monitoring will focus on compliance with primary emphasis on those areas with the potential to cause the highest levels of impacts to resources (PRMP/FEIS at F-5). Various methods of monitoring may be employed including; aerial monitoring, ground patrol, "citizen watch," and appropriate methods of remote surveillance such as traffic counters, and the like (PRMP/FEIS at F-10). Where monitoring identifies resource impacts, future implementation level plans could consider designation of specific camp sites (PRMP/FEIS at 2-44). Additionally, the BLM analyzed the impacts of travel management including the 150-foot access area, as outlined and described on 4-242 and 4-361 of the PRMP/FEIS.

Motorized/Mechanized Use on Administrative Access Ways

Issue Number: PP-UT-MONTICELLO-08-0017a-83

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Although this information is not disclosed in the PRMP, an analysis of BLM's GIS data for these WSAs indicates that approximately 19 miles of ways will be designated in these three WSAs, as shown on SUWA's Exhibits C and D. It is clear that none of these 19 miles of ways will be "closed and rehabilitated," as the PRMP states that the trails that will be closed and rehabilitated will not be "designated" in the PRMP. See *id.* at 1-25. Thus, the PRMP must be corrected to disclose that 19 miles of ways will be designated in three WSAs in order to provide accurate information to the public and decision-maker prior to the issuance of a final decision. See 40. C.F.R. §§ 1500.1(b) and 1502.8 (accurate data and analysis must be disclosed to public and decision-maker in a way that the public can easily understand, to allow for sufficient public scrutiny).

Response

The BLM has identified 5 ways in three WSAs on Cedar Mesa that are not cherry-stemmed and that are not designated for closure in the PRMP. Those ways total 10.78 miles on BLM lands. Some of these ways access and traverse State lands. One of them, a 0.08 mile way to access to the Moon House trailhead in Fish Canyon ACEC, will remain open consistent with an agreement between the BLM and San Juan County. The other ways will remain open only to provide administrative access and are as follows: (1) Two ways in Grand Gulch WSA (Pine Canyon and Slickhorn units) totaling 3.1 miles; (2) One way in Fish Creek WSA (Lower Baullies Mesa) totaling 4.93 miles; and (3) One way in Road Canyon WSA (Perkins Point) totaling 2.67 miles. No motorized/mechanized recreational use will be allowed on any of these administrative access ways. The Approved RMP will be changed to clarify this point.

Vegetative Communities *Vegetation Treatment Decisions*

Issue Number: PP-UT-MONTICELLO-08-0007-20

Organization: Ecos Consulting

Protester: Charles Schelz

Issue Excerpt Text:

The BLM is proposing to manage the resources by "vegetation treatment" of an average of 18,000 acres a year, or over 20% of the total area of the Monticello planning area in the next 10-20 years. If such drastic vegetation treatments are needed, then the past management of the planning area is seriously in question, and the causes of the need for extensive vegetation treatment must be fully analyzed and rectified. This appears to be an arbitrary and excessive figure for which no basis is provided in the PRMP.

Response

The management action to perform vegetation treatments on an average of 18,000 acres a year is designed to give BLM management flexibility in performing vegetation treatments. This figure is the estimated maximum amount of acres that would potentially be treated per year. This average is based on the acres anticipated for treatment for sagebrush restoration, noxious/invasive plant control, maintenance of existing land treatments, fuels treatments and other land treatments necessary to restore ecosystem health and functioning condition. The rationale and analysis for these treatments is found in the 2005 Fire Management Plan Environmental Assessment and in the PRMP/FEIS (see PRMP/FEIS at 2-17, 2-80, 4-63, 4-602,

4-606, and 4-665). The actual areas (18,000 or less) to be treated in any given year will vary based on available funding, cooperator support, and availability of contractors and other resources.

Data Requirements for Analysis of Riparian Areas

Issue Number: PP-UT-MONTICELLO-08-0017b-3
Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

FLPMA, the ORV regulations, and the Utah Riparian Policy require BLM to protect and minimize impacts to riparian areas. The goals and objectives listed in the PRMP, fails to specifically include the requirements of the ORV regulations (to minimize impacts to riparian areas), although the objective of avoiding or minimizing the destruction, loss or degradation of riparian habitats (See PRMP at 2-47) could be effective to protect the riparian resources and minimize impacts from ORV designation decisions if BLM's subsequent decisions were consistent with these objectives. However, the proposed decision to designate 2,820 miles of ORV route, some of which are in riparian areas such as Arch Canyon and Indian Creek, fails to comply with the stated objectives. The PRMP fails to include critical baseline, objective analysis of impacts, and other information for the public and decision-maker, including: 1) a current listing of the PFO's perennial stream segments and their associated functioning conditions (i.e. proper, at risk, or not-in-functioning condition); the stream condition information in the PRMP is nearly 15 years old (See id. at 3-102 to -107); 2) the number of miles of route within and/or near riparian areas and the number of stream crossings by designated routes (this information should also be depicted on a map showing riparian areas and route designations); and 3) an objective, scientific analysis of the impacts to riparian areas of designating 2,820 miles of motor vehicle routes.

Issue Number: PP-UT-MONTICELLO-08-0017c-95
Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The Monticello PRMP fails to provide much of the required information and analysis [for riparian resources], and accordingly fails to reveal to the public the full impact of the Monticello Field Office's riparian resource management decisions. In addition to omitting much of the information required

by BLM's own policy, the PRMP also lacks the information necessary to understand the location of each riparian area and how it will be managed under the RMP.

Issue Number: PP-UT-MONTICELLO-08-0017c-98
Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Further, the PRMP provides no indication of the cause of the current status of each riparian area. Nor does the PRMP explain how it will ensure that all riparian areas either attain or are maintained at a Proper Functioning Condition status. Without this information, the public cannot fully understand whether BLM's proposed management of riparian areas sufficiently addresses the threats to that area such that the management scheme will "maintain, restore, and/or improve" the riparian area. See Utah BLM Riparian Policy at 1. Until BLM provides this information, the public cannot discern whether BLM has implemented aggressive, protective riparian management decisions, as required by the Utah BLM Riparian Policy. Inclusion of such information in the PRMP is required by statute, the Utah BLM Riparian Policy, and judicial review standards against agency action that is arbitrary, capricious, and contrary to law.

Issue Number: PP-UT-MONTICELLO-08-0017c-99
Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Even with the information BLM does provide in the PRMP, BLM does not appear to have complied with its own policy to aggressively protect riparian areas. The Utah BLM Riparian Policy clearly states that "[r]iparian areas are to be improved at every opportunity." Utah BLM Riparian Policy at 4. The Monticello Field Office, however, fails to utilize most of the opportunities before it in this RMP process to improve riparian areas. While the Monticello PRMP explains the benefits of protecting riparian areas, it fails to adequately impose such

protections on riparian resources in the Monticello Field Office. The PRMP repeatedly explains the serious damage OHV use, grazing, and other interference inflict on riparian areas, but still allows such activities in many riparian areas. These failures demonstrate that BLM is falling short of meeting its

responsibility to “maintain or improve riparian resources” and to “provide leadership . . . to preserve and enhance the natural and beneficial values of wetlands.” See Utah BLM Riparian Policy at 1; Exec. Order No. 11,990, 42 Fed. Reg. 26,961 (May 24, 1977).

Summary

The Monticello PRMP fails to provide much of the required information and analysis for riparian resources. Inclusion of such information in the PRMP is required by statute, the Utah BLM Riparian Policy, and judicial review standards against agency action that is arbitrary, capricious, and contrary to law. The BLM fails to minimize impacts to riparian areas.

Response

Properly-functioning riparian condition (PFC) is a goal of the plan and specific management prescriptions were formulated to achieve that goal. As stated in Section 3.12.2, not all of the lands in the planning area are currently in PFC. Many of the planning decisions, such as those related to grazing and riparian area management, are designed to move non-functioning areas towards this goal. However, it is impossible to provide the absolute assurance that this goal will be met within a specific timeframe that the protesting party seeks.

The Utah Riparian Policy, UT-IM-2005-091, states that existing planning documents will be reviewed to determine if the riparian sections are in compliance with the minimum requirements list for RMPs cited in the protest issues. Pursuant to the policy, existing plans will be updated through activity level plans or plan revisions if they are found to be noncompliant. This riparian policy was issued in 2005, two years after the Monticello RMP Notice of Intent. Therefore, the Monticello RMP was considered to be an existing plan; any noncompliance with the Utah Riparian Policy will be rectified by activity-level planning as noted in the PRMP/FEIS at page 2-47.

Nevertheless, the Monticello RMP has substantially complied with the policy as follows:

- Identified key riparian areas using PFC inventory and determine whether or not they are properly functioning systems in Chapter 3 in Table 3.24 (PRMP/FEIS at 3-104).
- Identified criteria for acquisition or exchange which will guide future acquisition or exchange of riparian areas (PRMP/FEIS at 2-19).
- Identified riparian areas with outstanding qualities to be considered for special designation or management. For example, the San Juan River SRMA, ACEC and WSR (segment #5), Grand Gulch within the Grand Gulch National Historic District, White Canyon SRMA, Dark Canyon WSR and SRMA, Indian Creek SRMA, and Fish and Owl Creeks, Mule Canyon, and Road Canyon WSAs.

The riparian resources decisions in the PRMP/FEIS provide adequate management to protect riparian and wetland areas from degradation and maintain or improve riparian functioning condition (PRMP/FEIS at 2-47). Additionally, OHV designations will help prevent impacts from vehicles to riparian areas by closing some areas and limiting vehicle use to designated roads and trails in other areas (See PRMP/FEIS at 2-76, 2-77). The limitation of livestock use to trailing only in certain riparian areas will also help to maintain proper functioning condition by limiting livestock effects on stream banks and riparian vegetation (PRMP/FEIS at 2-22, 2-23).

Visual Resource Management

Visual Resource Management Inventory Information

Issue Number: PP-UT-MONTICELLO-08-0017b-53

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Aside from Class designation decisions that fail to adequately protect visual resources, there are major deficiencies in how BLM conducted its analysis of visual resource management in the RMP process. First, the visual resource inventory on which BLM's visual resource management decisions are based is old and outdated. Responding to a comment submitted about the Draft RMP by the State of Utah, BLM explained that the "VRM inventory was completed in the late 1970s and early 1980s. These inventory classes were not changed." BLM Response to Comments of the Draft RMP/EIS, sorted by Resource, at unpaginated p. 273. While BLM states that "an interdisciplinary team of BLM resource specialists" worked together to designate management classes, BLM does not mention any update of the old inventory. See *id.* Without a new, updated inventory, all of BLM's visual resource management decisions are based on potentially inaccurate information. Much has changed in the past

25 years, including changes to the landscape as well as changes in the public's concern about particular areas. An accurate, recent inventory is necessary for BLM to make sound management decisions. Relying on an inventory conducted three decades ago to make management decisions that will impact visual resources for the next several decades is arbitrary and capricious and violates FLPMA and NEPA.

Issue Number: PP-UT-MONTICELLO-08-0017b-55

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Further, NEPA requires BLM to understand the consequences of the decisions it makes during the RMP process. BLM cannot possibly fully understand the consequences of its visual resource management decisions without knowing the current conditions of the Field Office's visual resources. BLM must conduct a new visual resources inventory to assess actual modern day conditions. Once BLM possesses such information, it can understand the real consequences of any future disturbance and can make new, informed visual resource management decisions

Summary

The BLM cannot possibly fully understand the consequences of its visual resource management decisions without knowing the current conditions of the Field Office's visual resources. The BLM must conduct a new visual resources inventory to assess actual modern day conditions.

Response

The visual resource inventory for the Monticello planning area was completed in 1980, reviewed in 1991 and carried forward without adjustment into the RMP as the VRM management classes. The visual resource inventory was reviewed in 2003 for the Analysis of the Management Situation (AMS) and again in 2005 for the RMP. After field review of the existing landscape conditions, management conformity with the current land use plan, and the relevance of the existing visual resource inventory, it was determined that the current visual resource inventory was satisfactory to make informed decisions during this RMP process. The current visual resource inventory represents the best available data for preparation of the PRMP/FEIS. Because the BLM manages for VRM objectives, VRM classifications in the planning area have not changed significantly and will not affect the decisions in the plan.

Visual Resource Management Class I and Class II Decisions

Issue Number: PP-UT-MONTICELLO-08-0010-34

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

The VRM Class I and II restrictions in the PRMP/FEIS would constitute a major impediment to development. The inclusion of 228,041 acres as Class II would unreasonably restrict development of existing oil and gas leases (page 2-81). Since oil and gas development is a temporary disturbance to the surface with temporary visual impacts, as most wells are abandoned after twenty to thirty years, the VRM provisions do not provide a reasonable balance between protecting vistas and developing energy resources needed by the nation.

Response

The BLM took into account existing land uses in reaching the decisions related to visual resource management. Management for VRM Class II objectives does not preclude surface-disturbing activities, however, it may require project modification, relocation, or special design and mitigation features. This will be determined on a case-by-case basis as part of the site-specific NEPA analysis and will generally depend on the visual effects to specific viewpoints. VRM Class I management will not actually inhibit oil and gas development since it is only applied in WSAs, where leasing is prohibited; or in ACECs and WSR corridors, which will be no-leasing or NSO.

Water

Baseline Information and Monitoring Data

Issue Number: PP-UT-MONTICELLO-08-0017b-80

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Before permitting activities in the PRMP, and in order to comply with FLPMA, BLM must analyze the baseline water quality for all the water bodies in the planning area, and provide a summary in the PRMP of the water quality analyses and modeling for the water bodies in the planning area. The baseline analysis should provide monitoring of water quality indicators, including temperature, alkalinity, specific conductance, pH, dissolved oxygen, turbidity, hardness, dissolved solids, and suspended solids, as required by the CWA. Knowing the baseline water quality is essential to understanding whether the activities permitted in the PRMP will violate WQS, the CWA, and FLPMA.

Issue Number: PP-UT-MONTICELLO-08-0017b-82

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Because BLM failed to analyze water quality baselines and similarly failed to model the water-quality effects of activities in the PRMP, there is no evidence that the Monticello PRMP will comply with federal and state water quality standards, as required by FLPMA and the BLM itself.

Issue Number: PP-UT-MONTICELLO-08-0017b-85

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Without analyzing baseline concentrations and preparing modeling to determine what impacts permitted activities will have, BLM cannot understand or disclose the impacts on water quality from new activities that will increase pollutants. (For an example of water quality analysis and modeling, see Exhibit V). Thus, BLM's lack of water quality analysis does not satisfy NEPA's hard look requirement.

Summary

Before permitting activities in the PRMP, and in order to comply with FLPMA, the BLM must analyze the baseline water quality for all the water bodies in the planning area, and provide a summary in the PRMP.

Response

Detailed baseline information on riparian condition is available in the Monticello Field Office, and is part of the administrative record. This information was summarized in Section 3.14.7 of the PRMP/FEIS. The BLM works cooperatively with the State of Utah Department of Environmental Quality (DEQ) to monitor water quality. The results of this water quality monitoring, along with other best available data, formed the basis for the discussion of existing water quality in Section 3.14.7. In particular, the DEQ annual Integrated Report was incorporated. The nature and scope of the proposed action dictates the level of analysis, and specificity of information required. For the broad planning level analysis, the information provided in Chapter 3 provides a general summary of baseline water quality, which is sufficient to make a reasoned choice among the alternatives. Therefore, more detailed water indices are not necessary or required. See also response to Protest Issue 7.1.1.

Impact Analysis and the Needs for Modeling

Issue Number: PP-UT-MONTICELLO-08-0017b-75

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The Monticello PRMP fails to analyze and model the impacts of the activities that it permits on water quality in the planning area. Both FLPMA and NEPA require that BLM prepare such analysis. BLM must analyze and model pollutant concentrations in order to understand if the PRMP will comply with federal and state water quality standards, as required by FLPMA.

Issue Number: PP-UT-MONTICELLO-08-0017b-76

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Without conducting water quality analyses and modeling, BLM will not understand the effects of the pollutants generated from activities authorized by the PRMP, and will thereby violate NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting.

Issue Number: PP-UT-MONTICELLO-08-0017b-78

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Because the Monticello PRMP permits activities (e.g., off-road vehicle travel on designated routes) and analyzes potential future activities (e.g. oil and gas leasing etc.) without modeling the effect that these activities will have on concentrations of pollutants in water, the PRMP fails to satisfy its FLPMA obligation.

Issue Number: PP-UT-MONTICELLO-08-0017b-87

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP has completely failed to consider the impacts of these pollutants on the local water bodies. Because dust, engine fluids, run-off, and erosion can all contribute to exceedances of total dissolved and suspended solids counts, as well as increased salinity, (which BLM has admitted is of particular concern in Monticello) it is vital that BLM determine the baseline water quality and quantitative levels of these contaminants, estimate the number of vehicles that will use the proposed designated routes, estimate the level of contaminants generated by that use, and then model those figures to understand the true impacts of

fugitive dust emissions, engine fluids, run-off, and erosion on water quality. PRMP at 3-138. To comply with NEPA, BLM must take a hard look at the impacts of designating so many routes, and must

provide quantitative water quality analysis and modeling to ensure that its actions will not violate federal and state water quality standards.

Summary

The Monticello PRMP fails to analyze and model the impacts of the activities that it permits on water quality in the planning area.

Response

The scope and nature of the specific proposed action drives the level of analysis necessary to comply with the requirements of NEPA. Resource Management Plans are used to evaluate broad policies and plans at a landscape level and provide an analytical foundation for subsequent project-specific NEPA documents. The impacts to water quality as a result of the management decision in the PRMP/FEIS are analyzed at the appropriate level of detail for RMP-level decisions and are fully disclosed in Section 4.3.13. Water quality modeling was not conducted at the planning-level of analysis because many of the necessary inputs or variables, such as detailed information on sources, are not available. Modeling at a landscape-level is extremely complex and standardized models and protocols are not available. However, modeling will be conducted, where appropriate, for site-specific analysis at the project-level.

Wild and Scenic Rivers

Wild and Scenic Rivers Eligibility Process

Issue Number: PP-UT-MONTICELLO-08-0009-11

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The BLM did not give the public adequate information necessary to provide meaningful comment, both upon publication of the Draft RMP and now with this latest document in the planning process, the PRMP. Most importantly, the BLM's own documentation show absolutely no information regarding the interpretation and weighing of the suitability factors for each river segment in order to justify or explain the conclusions reached regarding the suitability or non - suitability of each river segment. The BLM's own documents and records reveal no information on the evaluation of the suitability factors. The lack of any such records or documentation causes the BLM's suitability determinations to be questioned. It appears that the BLM is making its suitability recommendations based on some back room dealings and then is filling in the information in the suitability factors to justify their decisions. Therefore, the BLM acted arbitrarily and capriciously in its suitability determinations for all rivers in the Monticello Field Office.

Issue Number: PP-UT-MONTICELLO-08-0009-3

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

1. The BLM did not properly disclose its process and results as required by the WSRA and the NEPA as well as subsequent policy guidance including BLM Manual 8351, and the Wild & Scenic River Review In the State of Utah. Process and Criteria for Interagency Use (July 1996) (Blue Book). The BLM did not provide adequate documentation about its eligibility study of rivers in the Price Field Office in any documents, beginning with the November 2007 Draft RMP3, and now the PRMP. This failure to fully disclose or document information that the BLM used to make eligibility determinations for rivers in the Price Field Office did not allow the public to understand the BLM's eligibility decisions or to provide meaningful comments and therefore, violates both the WSRA and NEPA.

Issue Number: PP-UT-MONTICELLO-08-0009-33

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The lack of information listed for each river in the suitability factors in Appendix H, including how the different factors and information were evaluated; make it impossible to determine the true reasons for the BLM's suitability recommendations.

Issue Number: PP-UT-MONTICELLO-08-0009-36

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

In the BLM's comment analysis in Chapter 5 of the PRMP, it failed to adequately address substantive comments submitted by the Utah Rivers Council. For example, despite numerous examples of the BLM's failure to disclose its rationale for suitability determinations in the Proposed Plan the agency does not provide an adequate response that explains its actions and determinations.

Issue Number: PP-UT-MONTICELLO-08-0009-38

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The Utah Rivers Council expressed strong concerns with this lack of information regarding the suitability evaluations in the Draft RMP in letter to the BLM dated, February 5, 2008. "The suitability analysis is incomplete and inconclusive."⁴⁰ The BLM responded to this concern from the Council in the PRMP, "Alternative B emphasizes the protection/preservation of natural resources, thereby analyzing the impacts of finding all eligible river segments, as suitable. Alternative C is the preferred alternative because it provides a balanced approach of protection/preservation of natural resources while providing for commodity production and extraction..." "Appendix H fully discloses the review and evaluation process for determining which river segments are eligible and suitable for such designation"⁴¹This response from the BLM does not address the concern of how the suitability factors were evaluated. Additionally, as has been explained above, Appendix H does not actually provide enough information or documentation to explain the conclusions reached regarding the suitability or non-suitability of different rivers. Which characteristics of management considerations lead the BLM to a positive suitability determination? Which lead to a negative suitability determination? How is management weighed against ORV? Which is more important? How did the BLM weigh public support versus local county opposition? These are critical questions that the BLM must answer in order for the public to understand its decision-making process.

These are questions that must be addressed prior to making a final suitability determination in the Record of Decision for the RMP.

Issue Number: PP-UT-MONTICELLO-08-0009-5

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The BLM does not provide any documentation in Appendix H that justifies and explains the decisions regarding the non-eligibility or changes in eligibility of the river segments that were dropped from eligibility between the 2003 document (which was available for the public to comment on) and the Draft RMP in 2007. No basis or documentation for this decision is provided. Only 12 of 167 rivers originally considered or 21 originally identified as potentially eligible were determined to be eligible by the BLM. Nowhere does the BLM provide any information, documentation, or maps that explain the reasons for the non-eligibility of these river segments on a river by river basis. The only information on any of the rivers deemed not eligible by the BLM is Attachment 1 - a list of river(s) segments inventoried and evaluated by Monticello FO, Drainages by River System; Monticello FO. The PRMP includes the same language as the Draft RMP regarding the eligibility study and therefore, also fails to include adequate documentation regarding the non-eligibility of the rivers that were identified as potentially eligible. This failure to fully document the BLM's eligibility decisions in both the Draft RMP and PRMP violates the Blue Book and BLM Manual 8351. Furthermore, the BLM never gave the public an opportunity to review and comment on the changes of eligible rivers when the BLM altered the list of eligible rivers following BLM IM 2004-196. If the BLM intends to disclose rationale for its eligibility processes in the Record of Decision (ROD), we submit that is unacceptable because the public will no longer be able to provide comment. Therefore, the BLM acted arbitrarily and capriciously in its eligibility study.

Issue Number: PP-UT-MONTICELLO-08-0009-9

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

b. It is absolutely unacceptable that the BLM provide the rationale regarding suitability in the Record of Decision. The BLM itself admits in the PRMP that, "The actual determination of whether or not each eligible river segment is suitable is a decision that will be made in the Record of Decision for the Monticello RMP."¹⁴ In other words, the BLM is

saying here that the final decisions regarding suitability will be made in the ROD. This is unbelievably arbitrary and capricious since this means the BLM will not provide the rationale or justification for its decisions anywhere. It is understandable that the BLM will not make its final decisions regarding suitability until the ROD, but via this statement the BLM is saying that it will not provide a rationale for the suitability determinations. The BLM has not explained, nor does it plan to explain, anywhere in the Draft RMP or PRMP how it has reached its decisions regarding the suitability of each river. However, it would still be unacceptable if by chance the BLM does provide the rationale for its suitability determinations in the ROD. If the BLM chooses to take this course of action, it means that the

BLM will make its decision regarding suitability first and then will develop a rationale to fit the conclusion it has already reached, thereby cutting the public out of the process. This is completely and irrevocably arbitrary and capricious. Based on all documentation on record and the BLM's own response to the Council's comments, it appears, that the BLM's suitability decisions were already made prior to any evaluation. The rationale for the evaluation is something that the BLM is proposing to create after the BLM has already decided which rivers are suitable and which are not suitable. This is truly arbitrary and capricious. By doing so, the BLM is cutting out the public from the process and making its own decisions based on some unknown factors.

Summary

The BLM did not properly disclose its process and results as required by the Wild and Scenic Rivers Act (WSRA) and the NEPA as well as subsequent policy guidance including BLM Manual 8351, and the *Wild & Scenic River Review in the State of Utah*.

Response

The BLM's rationale for all eligibility determinations is detailed in the Eligibility Report. The rationale for the final decisions will be detailed in the Record of Decision. The BLM is required to provide the rationale supporting suitability determinations for eligible river segments studied in the RMP, however the BLM is not required to provide public review and comment for the decision rationales.

The rationale for the final decisions will be detailed in the ROD for the Monticello RMP in compliance with BLM-M-8351 section .33(b) (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management). According to Manual 8351.33(a), the BLM should consider, among other factors, “Federal, public, State, tribal, local, or other interests in designation or non-designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State, local, or other agencies and individuals.” Section .33(a)(8) also provides the BLM with discretion to consider issues and concerns other than those enumerated in the WSRA. Therefore, the specific factors considered by the BLM in ascertaining the eligibility or suitability of river segments in the Monticello planning area are within the discretion of the BLM and are not arbitrary and capricious.

The Eight Wild and Scenic Rivers Act Factors

Issue Number: PP-UT-MONTICELLO-08-0009-12

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The BLM acted arbitrarily and in violation of the

WSRA, because it considered factors beyond the 8 enumerated in the WSRA. If Congress had intended for agencies to consider factors beyond these than it would have explicitly stated so. Specifically, the BLM lists one inappropriate and arbitrary factor:

Manageability of the river if designated and other means of protecting values.

Issue Number: PP-UT-MONTICELLO-08-0009-15

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

With respect to the PRMP, the BLM's application of the suitability factors to all eligible rivers in the BLM Monticello Field Office's jurisdiction is arbitrary because they consider factors beyond the eight enumerated in the WSRA. For example, the BLM considers, "Ability of the agency to manage and protect the values of a river area if it were designated, and other mechanisms to protect identified values other than Wild and Scenic River designation." This factor appears to be of extreme importance in the BLM suitability determinations due to the fact that the response to this factor in the suitability considerations for each river segment is the main one that seems to lead towards a not-suitable finding.

Issue Number: PP-UT-MONTICELLO-08-0009-17

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

This manageability factors not included among those enumerated by Congress in the WSRA. The BLM should not consider this factor or base any of its suitability determinations on it. Therefore, the BLM acted arbitrarily and capriciously by including this factor and using it in the suitability study for all rivers in the Monticello Field Office.

Issue Number: PP-UT-MONTICELLO-08-0009-18

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

By considering factors beyond the original eight factors enumerated by Congress, the BLM is bypassing and shortcutting the designation process envisioned by Congress. In other words, by expanding the suitability factors, the BLM is standing in Congress' shoes by rejecting rivers as unsuitable based on purely political grounds. The eight factors listed in the WSRA are far cry from the BLM's current approach to suitability of rivers. By including several factors beyond those enumerated by the Congress the BLM has transformed the straightforward objective suitability standard outlined in the WSRA into an amalgam of subjective criteria that offers cover for all decisions to reject rivers as unsuitable. Requiring an agency to include a

suitability factor that lists uses that will be enhanced or foreclosed (the good and bad) does not equate to a river being deemed 'unsuitable' because the Federal agencies think other uses are more important than river protection. Indeed, any interpretation to the contrary would undermine the very purposes of the WSRA to preserve the Nation's outstanding rivers from the threat of development. In fact, the plain language of section 4(a) of the WSRA, the legislative history, the 1982 Guidelines, and express policy goals of the WSRA suggest that some threat of future development does not, and should not, render a river 'unsuitable.'²⁰

Issue Number: PP-UT-MONTICELLO-08-0009-21

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The information in the Attachments in Appendix H shows that the substance of most of the opposition is not based on facts. For example, regarding the San Juan River segments, "San Juan County feels that further development is highly probable, and that oil and gas development as well as other mineral extraction activities is incompatible with WSR designation."²³This concern is ill founded based on the language in the Act itself and the information in the technical papers from the Interagency Wild and Scenic Rivers Coordinating Council. According to the Act, "Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system, except that..."²⁴ The Act then outlines the exceptions, which are explained by the Interagency Coordinating Council that only river segments designated as "wild" would be closed from new mining claims or leases. Existing rights would not be impacted other than the fact that any actions taken must be done in a way that does not negatively impact the values for which the river was designated. For segments designated as, 'recreational' or 'scenic', "... filing of new mining claims or mineral leases is allowed but is subject to reasonable access and regulations that minimize surface disturbance, water sedimentation, pollution and visual impairment."²⁵

Issue Number: PP-UT-MONTICELLO-08-0009-30

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

Wild and Scenic River Protection is the Only Guaranteed Way to Protect a River's Identified Outstandingly Remarkable Values - The BLM acted arbitrarily and capriciously by finding many river segments not-suitable because other protection

mechanisms are in place that would protect the identified values. Layering of protection or designating a river as a Wild and Scenic River when the river is located in an area that already has or is proposed to have some other form of protection is not duplicative. Each type of protection is unique and is designed to protect something different - the free-flowing character of a river for Wild and Scenic River designation. The Council expressed these same concerns to the Monticello Field Office in a comment letter on the Draft RMP dated February 5, 2008. The BLM responded to this comment in the PRMP," Appendix H fully discloses the review and evaluation process for determining which river segments are eligible and suitable for designation. In Alternative C, 18.4 miles are proposed as suitable for inclusion into the Wild and Scenic System. In the FEIS, in addition to the segments recommended as suitable in Alternative C, Segment 5 of the San Juan River is recommended as suitable for a total of 35.7 miles."33 This response fails to address the concern and the BLM did not modify the document. footnote 32 Monticello Field Office Proposed Resource Management Plan and Final Environmental Impact Statement. August 2008. Appendix H, page H-106. footnote 33 Monticello Field Office Proposed Resource Management Plan and Final Environmental Impact Statement. August 2008. Designating a river as a Wild and Scenic River provides certain protections that are unique to the river and corridor. As stated earlier, this is the only type of protection whose goal is specifically to preserve the free-flow of the river. As section 1 (b) of the Act states the river, ". . . shall be preserved in free-flowing condition..." Furthermore, section 1278 of Title 16 U.S.C places restrictions on hydroelectric and water resource development projects. The Act explicitly prohibits the Federal Energy Regulatory Commission licensing of new construction for hydropower projects on designated rivers. There is absolutely no basis or rationale to find a river not suitable simply because other types of protections already exist or are being proposed. The Interagency Wild and Scenic Rivers Coordinating Council agrees and states in a technical report, " Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges, and designated wilderness. Each designation recognizes distinct values for protection and generally do not conflict. In some cases, WSR designation extends beyond the boundaries of other administrative or congressional area designations, thereby providing additional protection to the free-flowing character and river values of the area."34 Additionally, the Act itself includes some language in case a river is designated that is located within a Wilderness area. Section 10(b) of the Act addresses potential conflicts

between the Wilderness Act and the Wild and Scenic Rivers Act. It states, where this occurs the more restrictive provisions would apply.35

Issue Number: PP-UT-MONTICELLO-08-0017b-59

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM violates the WSRA and the BLM Manual by failing to recommend segments that otherwise qualify as suitable because they are supposedly protected by some other management prescription, including WSA status, ACEC designation, or SRMA designation. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). The Monticello PRMP repeatedly justifies its failure to recommend suitable segments by stating that other means of protection, such as ACEC designation, SRMAs, and the IMP for WSAs will protect Indian Creek, Dark Canyon, Arch Canyon, Fable Valley, and various segments of the San Juan River. PRMP at Appendix H-103 to -107. However, these other management prescriptions are only temporary, and do not offer permanent protection specifically for the rivers' outstandingly remarkable values. PRMP at 1-10, 4-299. By failing to recommend segments that otherwise meet the suitability criteria as suitable, BLM violates the WSRA by applying criteria outside of those enumerated in the WSRA and the BLM Manual, and allows for the potential degradation of these rivers and their outstandingly remarkable values. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). BLM's failure to recommend these otherwise-suitable sections defeats the purpose of the WSRA, which is to protect rivers and their outstandingly remarkable values. 16 U.S.C. §§ 1271, 1272, 1276(d).

Issue Number: PP-UT-MONTICELLO-08-0017b-63

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Monticello BLM confirms Moab's position in its response to San Juan County's comment that a suitability recommendation for Dark Canyon is unnecessary because that segment is already within a WSA: The Wild and Scenic River suitability process and the WSA process differ. The outstandingly remarkable values found along Dark Canyon differ from the wilderness values found within the WSA. It is very common for rivers within Wilderness Areas to be designated as Wild and Scenic Rivers. PRMP Response to Comments, Sorted by Resource, at unpaginated 367, Comment 7-52. As Monticello

BLM explains, outstandingly remarkable values are different from wilderness values and the fact that an eligible segment is within a WSA is not a justification for failing to recommend that segment suitable. Thus, WSA protection under the IMP, ACEC designations, and other management prescriptions do not adequately protect the eligible river segments and their outstandingly remarkable values. As discussed elsewhere in this protest (see, e.g., Water Quality section, Riparian section, and Travel Management section), designated routes and off-road vehicle travel on these routes, negatively impact water quality and riparian values, as well as the outstandingly remarkable values of eligible rivers. SRMAs, in particular, have nothing to do with protecting rivers. SRMAs are designated solely to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc. BLM Land Use Planning Handbook, H-1601-1, Appendix C at 15-17 (March 2005). Therefore, BLM's reliance on other management prescriptions, such as SRMAs, ACECs, and WSAs to protect rivers' outstandingly remarkable values violates the management prescriptions of the WSRA and the BLM Manual, as well as the very purpose of the WSRA. 16 U.S.C. §§ 1271, 1272; 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A).

Issue Number: PP-UT-MONTICELLO-08-0017b-65

Organization: Southern Utah Wilderness Alliance et

Summary

The BLM acted arbitrarily and in violation of the Wild and Scenic Rivers Act (WSRA), because it considered factors beyond the eight enumerated in the WSRA.

Response

The BLM is in full compliance with BLM Manual 8351. According to BLM Manual 8351, the BLM should consider among other factors "Federal, public, State, tribal, local, or other interests in designation or non-designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State, local, or other agencies and individuals." Section .33(a)(8) also provides the BLM with discretion to consider issues and concerns other than those enumerated in the Wild and Scenic Rivers Act. Therefore, the specific factors considered by the BLM (detailed in Appendix H of the PRMP/FEIS) in ascertaining the eligibility or suitability of river segments in the Monticello planning area are within the discretion of the BLM and are not arbitrary and capricious.

San Juan River and Colorado River Segments

Issue Number: PP-UT-MONTICELLO-08-0009-23
Organization: Utah Rivers Council

al.

Issue Excerpt Text:

SUWA supports BLM's decision to recommend Dark Canyon,²⁵ one segment of the San Juan River, and two segments of the Colorado River as suitable.²⁶ PRMP at 2-133 to – 137, 4-510, Map 55. However, BLM should also recommend additional suitable segments, namely Indian Creek, Fable Valley, Arch Canyon, one more segment of the Colorado River, and additional segments of the San Juan River. PRMP at Appendix H, Map 54. Failure to recommend these eligible segments as suitable is contrary to the findings expressed in Appendix H of the PRMP, which provides compelling documentation as to why these additional stream segments possess outstandingly remarkable values and otherwise meet suitability requirements. PRMP at Appendix H. Failure to recommend these segments suitable is also contrary to BLM's own admission that short-term surface-disturbance from mineral development, ORV use, or other activities would result in a long-term or irretrievable loss of outstandingly remarkable values. PRMP at 4-520 to - 521. NWSRS inclusion is the best and only way to adequately protect the identified outstandingly remarkable values of all of these streams. BLM should recommend these segments suitable in order to better manage the ecosystems and protect watersheds of the planning area.

Issue Excerpt Text:

The BLM acted arbitrarily and capriciously in the suitability analysis because it did not consider each eligible segment independently in the Suitability Analysis. The BLM suitability analysis studied all segments of the San Juan River and Colorado River together. This makes it impossible to determine which of the five segments of the San Juan River or which of the three segments of the Colorado River the information is referring to. The fact that the BLM fails to consider each segment independently is incredibly arbitrary. The Suitability factors for each river are listed in Attachment 5 of Appendix H. The name of this Attachment is, 'Suitability Considerations by River Segment.' (emphasis added). The title of this attachment infers that the BLM considered each segment, which is not in fact true. This vagueness of considering the suitability of multiple segments of the Colorado and San Juan Rivers together is compounded by the lack of maps or other documentation to support this information. For example, under the San Juan River is the statement, "There are Federal Energy Regulatory Commission (FERC) withdrawals along the north side (BLM) of the San Juan River." There are no maps in the PRMP to show where these sites are.

Thus, it is not possible to determine which of the five segments of the San Juan this may impact. Despite this failure to distinguish individual segments the BLM still finds two of the three Colorado River segments suitable and only one of the five San Juan River segments suitable. Combining all of the segments together in Attachment 5 confuses the analysis and makes the BLM's decision to find certain segments suitable and others not - suitable completely arbitrary and capricious.

Issue Number: PP-UT-MONTICELLO-08-0009-27

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

Based on all information and documentation on record in the Draft RMP, PRMP, and the response to the Council's FOIA request, the Navajo Nation has never directly stated their opposition to designating the San Juan River segments a Wild and Scenic River. The BLM's decision to include a statement about the Navajo Nation's concerns in the PRMP is arbitrary and capricious since there is no documentation on record and therefore is not supported.

Summary

The BLM acted arbitrarily and capriciously in the suitability analysis because it did not consider each eligible segment independently in the Suitability Analysis. This makes it impossible to determine which of the five segments of the San Juan River or which of the three segments of the Colorado River the information is referring to.

The BLM's decision to include a statement about the Navajo Nation's concerns in the PRMP is arbitrary and capricious since there is no documentation on record and therefore is not supported.

Response

The portion of Appendix H that discusses the "Suitability Considerations by Eligible River Segment" (Attachment 5) discloses the factors considered by the BLM in arriving at the suitability determinations. Discussion of the suitability considerations for these contiguous river segments was consolidated in Appendix H because the segments identified with the outstandingly remarkable values are reasonably similar. While Appendix H provides a general discussion of considerations, it does not represent the BLM's complete rationale for its suitability findings.

The BLM's *Wild and Scenic River Review in the State of Utah, Process and Criteria Use, July, 1996* ("Blue Book") acknowledges that, to the extent possible, rivers are most effectively evaluated through a process of segmentation. In this attachment, however, the BLM reasonably combined the discussions for the Colorado and San Juan River segments. When a consideration applies to an individual segment, clarification is provided in the text (See PRMP/FEIS at H-101). Under the suitability considerations in the third bullet, reasonably foreseeable mineral leasing is

identified specific to river miles. It states “On the lower 12 mile segment mineral leasing is currently Category 1, surface use with standard conditions apply for approximately the first 4 miles of land adjacent to the river. Below approximately river mile 40 to the Canyonlands National Park boundary, mineral leasing is Category 2, special conditions apply.” In other words, while these river segments are generally considered as a whole, each river segment is separated from the more general discussion for specific consideration as necessary and appropriate given each segment’s unique characteristics. The rationale for the final selection, including a more thorough explanation for the BLM’s decision is provided in the Record of Decision.

Section H.4 explains the Monticello Field Office’s consideration of wild and scenic rivers. The Wild and Scenic River study process documentation fully supports the BLM’s analysis in the EIS. The river segments in question (along the Colorado and San Juan Rivers) were discussed throughout the document individually (see Table 2.1 and sections 3.15.2.1 and 4.3.14.4). Appendix H likewise treats these segments individually when appropriate and necessary. The information and analysis contained in the PRMP/FEIS represents an tailored and well-crafted discussion and explanation of the BLM’s consideration of Wild and Scenic River suitability.

Lastly, the Navajo Nation expressed apprehension about Wild and Scenic River designation in three separate letters to the Monticello Field Office on November 11, November 13, and December 12, 2003 (available at the Monticello Field Office and included in the administrative record for the PRMP/FEIS. Those letters stated that there were concerns regarding jurisdictional issues, the impact of designation would have on water development and water rights, and the functioning of the Navajo Dam. Through continued consultation with the Navajo Nation, the BLM was able to address each of these issues to the satisfaction of the Tribe and this was not considered a substantive issue in determining the suitability of the San Juan River.

Eligibility Determinations for Ephemeral Segments

Issue Number: PP-UT-MONTICELLO-08-0017b-71

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM’s decision to drop White Canyon, the upper reach of Dark Canyon, Grand Gulch, Slickhorn, Lime Creek, Comb Wash, Mule Canyon, and Fish/Owl/McLeod Canyons from eligibility based on their supposedly ephemeral natures is a misinterpretation of BLM Guidance. See Elena Daly, Instruction Memorandum No. 2004-196, Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with Respect to Eligibility Criteria and Protective Management, (June 22, 2004). BLM’s decision to drop these segments violates the WSRA and the BLM Manual and must be overturned. See PRMP at Appendix H-73; 16 U.S.C. § 1286(b); BLM Manual § 8351.31(B). There is no requirement in the WSRA that a river be perennial to be eligible. PRMP at Appendix H-73, 2-65, Table 2.1. The WSRA requires only that rivers be free-flowing, which means “existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.” 16 U.S.C. § 1286(b). Furthermore, the BLM Manual states that river flows may be intermittent, seasonal, or interrupted, as long as rivers flow for more than a few days a year, and as long as volume of flow is sufficient to maintain the outstandingly remarkable values identified within the segment. BLM Manual §§ 8351.31(B). Finally, the Instruction Memorandum upon which the PRMP relies, states that, “As a general rule, the segment should contain regular and predictable flows (even though intermittent, seasonal, or interrupted). This flow should derive from naturally-occurring circumstances, e.g. aquifer recharge, seasonal melting from snow or ice, normal precipitation, instream flow from spill ways or upstream facilities. Caution is advised in applying the . . . criterion to watercourses which only flow during flash floods or unpredictable years. The segment should not be ephemeral

(flow lasting only a few days a year). Evaluation of flows should focus on normal water years, with consideration of drought or wet years during the inventory.” Elena Daly, Instruction Memorandum No. 2004-196, Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with Respect to Eligibility Criteria and Protective Management, (June 22, 2004); PRMP at Appendix H-64. Thus, the Instruction Memorandum requires only that segments flow for more than a few days a year, and that they flow in response to natural circumstances. The Memorandum also indicates that flows should be evaluated in years of normal precipitation, not in drought years. BLM evaluated the above-listed streams in April/May 2004, which was the sixth year of a severe drought in Utah. Thus, the fact that no moving water was found in the above-mentioned river segments during a single evaluation period in a single dry year, does not mean that these segments flow only a few days a year and are not free-flowing. See PRMP at Appendix H-73. In order to comply with the Instruction Memorandum and to reliably determine whether these segments are free-flowing, further evaluations of the free-flowing nature of these streams should be conducted during normal precipitation years.

Summary

The BLM’s decision to drop several segments from eligibility based on their supposedly ephemeral natures is a misinterpretation of BLM Guidance.

Response

The BLM correctly interpreted IM 2004-196, Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with respect to Eligibility Criteria and Protective Management, June 21, 2004 (See PRMP/FEIS at H-72). This guidance clarifies policy contained in the BLM Manual 8351 and until is applicable to all river segments determined eligible and/or suitable. The BLM is required to exercise professional expertise in determining the eligibility of watercourses that are free-flowing and have associated ORVs. As a general rule, the segment should contain regular and predictable flows (even though intermittent, seasonal, or interrupted). This flow should derive from naturally occurring circumstances, e.g., aquifer recharge, seasonal melting from snow or ice, normal precipitation, instream flow from spill ways or upstream facilities. Caution is advised in applying the . . . criterion to watercourses which only flow during flash floods or unpredictable events. The segment should not be ephemeral (flow lasting only a few days of a year). Evaluation of flows should focus on normal water years, with consideration of drought or wet years during the inventory. Based on updated guidance in IM 2004-196, April/May 2004 field evaluations, Wilderness Study Area monitoring reports, and staff knowledge, the ID team, in consultation with the Monticello and Moab Field Managers, determined that following ephemeral streams or stream segments have been dropped from WSR eligibility consideration: White Canyon, upper reach of Dark Canyon, Grand Gulch, Slickhorn, Lime Creek, Comb Wash, Mule Canyon, and Fish/Owl/McLeod Canyons.

Wilderness Characteristics

Inventory of Lands with Wilderness Characteristics

Issue Number: PP-UT-MONTICELLO-08-0017a-68

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Throughout the PRMP process, SUWA has submitted significant new wilderness resource information documenting lands with wilderness characteristics that remain unidentified by the MFO. As discussed

below, the Monticello PRMP has improperly and illegally failed to consider this resource information resulting in proposed planning decisions that are not based on the most current information for lands with wilderness characteristics, and fails to consider impacts to all of the lands that retain wilderness character. As such, the PRMP fails to comply with the current inventory requirements of FLPMA and the hard look mandates of NEPA.

Issue Number: PP-UT-MONTICELLO-08-0017a-70

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM's response to simply stand by its previous decisions is non-responsive as it fails to address particular wilderness character lands identified by SUWA's new information, and fails to state if or how the agency assessed SUWA's substantive new information. Had BLM conducted site-specific reviews of the areas discussed in SUWA's new information, these areas would have been correctly identified as part of the larger, contiguous wilderness

character areas. BLM's failure to consider SUWA's new information is arbitrary and capricious and must be reversed, as it violates FLPMA's mandate to maintain a current inventory of resources and NEPA's requirement to use accurate information in evaluating and making management decisions. BLM must revisit each of these proposed wilderness units and conduct on-the-ground assessments to adequately consider SUWA's new information concerning BLM's flawed boundaries. BLM must consider whether the areas—after appropriate boundary adjustments using human impacts—have the requisite attributes to be wilderness character areas (including areas of less than 5,000 acres).

Summary

The BLM's failure to consider SUWA's new information is arbitrary and capricious and must be reversed, as it violates FLPMA's mandate to maintain a current inventory of resources and NEPA's requirement to use accurate information in evaluating and making management decisions.

Response

The BLM relied on the best available data in determining the parcels possessing wilderness characteristics. This process is adequately detailed in the PRMP/FEIS in section 3.9.1. The BLM fully considered all information submitted during the process, including that submitted by SUWA.

Existing Routes on Lands with Wilderness Characteristics

Issue Number: PP-UT-MONTICELLO-08-0017a-78

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

Simultaneously, BLM attempts to downplay the impacts of ORV use in non-WSA lands with wilderness character by stating “[l]imiting OHV use to existing routes would confine soil and vegetation disturbances caused by motor vehicles to existing routes, and result in no additional disturbance and change to the natural characteristics of the non-WSA lands with wilderness characteristics” See PRMP at 4-255. It is inconceivable that “irretrievable degradation of natural resources” would not result in “additional . . . change to the natural characteristics” of the wilderness character lands. The PRMP supplies no quantitative analysis to support BLM's contention that limiting vehicles to routes will result in no additional disturbance or change to wilderness characteristics.

Issue Number: PP-UT-MONTICELLO-08-0017b-24

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM's contention that allowing ORV use on existing trails within wilderness character areas will have no effect on the area's natural characteristics contradicts the agency's own 1980 wilderness inventory documentation that included numerous statements that the existence of ORV routes detracts from the naturalness of the area—which subsequently led BLM to drop areas from further wilderness consideration. BLM cannot have it both ways. Designating routes in wilderness character lands will encourage more motorized use of the trails and the existence of a well-used trail bare of vegetation affects the naturalness of the area and its future eligibility for wilderness designation.

Summary

The BLM's contention that allowing OHV use on existing trails within wilderness character areas will have no effect on the area's natural characteristics contradicts the agency's own 1980 wilderness inventory documentation that included numerous statements that the existence of OHV routes detracts from the naturalness of the area.

Response

In the context of the 1980 wilderness inventory, a vehicular route is only of concern if the impact on naturalness rises to the level of being substantially noticeable in the unit as a whole. The existence of a route in a wilderness characteristics area may detract from naturalness, however, that does not necessarily eliminate wilderness characteristics from the area altogether. The relative impact of a route on naturalness varies from case to case and those routes that are not noticeable will not compromise the wilderness characteristics. The BLM has analyzed the impacts from OHV routes on non-WSA lands with wilderness characteristics in Section 4.3.8.9.1.7 of the PRMP/FEIS.

Clarifying Route Mileage in Wilderness Characteristic Lands

Issue Number: PP-UT-MONTICELLO-08-0017a-75

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP includes contradictory statements. It states that there are 175 miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 173 miles of route in non-WSA lands with wilderness character that will be managed for other resource values (PRMP at 2-115), while simultaneously, and confusingly, stating that there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character (PRMP at 4-254). According to SUWA's calculations based on BLM's GIS data that was used to produce the ORV route maps at Exhibit K, there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 262 miles of route in non-WSA lands with wilderness character managed for other resource values. Part of the difference between the 175 (p. 4-254) and the 262 (GIS calculation) is that the PRMP erroneously omitted from the list on PRMP p. 4-254 the portions of Dark Canyon, Grand Gulch, Mancos Mesa and Nokai Dome wilderness character areas that BLM has decided not manage to protect wilderness characteristics. For purposes of this protest, SUWA will use the 262 mileage figure for lands not managed to protect wilderness character,

and -0- mileage figure for non-WSA lands with wilderness character managed to protect wilderness character. NEPA requires BLM to provide correct and accurate information in the PRMP, and in a manner that facilitates rather than impedes understanding. The Monticello PRMP fails to do so with respect to proposed miles of route in WSAs and non-WSA lands with wilderness character. See 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

Issue Number: PP-UT-MONTICELLO-08-0017b-22

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP includes contradictory statements regarding miles of route in wilderness character areas. It states that there are 175 miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 173 miles of route in non-WSA lands with wilderness character that will be managed for other resource values (PRMP at 2-115), while simultaneously, and confusingly, stating that there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character (PRMP at 4-254). According to SUWA's calculations based on BLM's GIS data that was used to produce the ORV route maps at Exhibit K, there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness

character and 262 miles of route in non-WSA lands with wilderness character managed for other resource values. Part of the difference between the two mileage figures is that the PRMP erroneously omitted from its list on page 4-254 the portions of Dark Canyon, Grand Gulch, Mancos Mesa and Nokai Dome wilderness character areas that BLM has decided not manage to protect wilderness characteristics. For purposes of this protest, SUWA will use the 262-mileage figure for lands not managed to protect wilderness character, and -0-

mileage figure for non-WSA lands with wilderness character managed to protect wilderness character, even though the PRMP reports the figure as 348 miles (PRMP at 4-289). NEPA requires BLM to provide correct and accurate information in the PRMP, and in a manner that facilitates rather than impedes understanding. The Monticello PRMP fails to do so with respect to proposed miles of route in WSAs and non-WSA lands with wilderness character. See 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

Summary

The PRMP includes contradictory statements. It states that there are 175 miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 173 miles of route in non-WSA lands with wilderness character that will be managed for other resource values, while simultaneously, and confusingly, stating that there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character.

Response

The protesting party is correct that the PRMP contains contradictory statements on miles of routes in non-WSA lands with wilderness characteristics. The PRMP on page 2-115 states “88,871 acres “limited” to 175 miles of designated routes in non-WSA lands with wilderness characteristics managed to protect those characteristics”. The Approved RMP will include the correct statement which reads “88,871 acres closed to OHV use with zero miles of designated routes in non-WSA lands with wilderness characteristics managed to protect those characteristics”.

The PRMP on page 4-289 correctly states that 348 miles of designated roads exist within non-WSA lands with wilderness characteristics that will be managed for other resource values. Roads along the boundaries and within non-WSA lands with wilderness characteristics managed for other resources are included in the 348 miles of road. The Approved RMP will be changed to clarify this point.

Authority to Manage Lands for Wilderness Characteristics

Issue Number: PP-UT-MONTICELLO-08-0010-22

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

In the PRMP, the BLM proposes to manage 88,871 acres of non-WSAs with wilderness characteristics to protect, preserve and maintain their wilderness qualities. San Juan County (SJC) protests the BLM's creation of a new classification of lands, "non - WSA lands with wilderness characteristics," that it seeks to manage to "protect, preserve and maintain wilderness characteristics" (Monticello Proposed RMP at 2-26).

The BLM's new land classification in essence creates de-facto Wilderness Study Areas (WSAs) or wilderness in violation of BLM's authority under the Federal Land Policy and Management Act (FLPMA) and the Wilderness Act.

Issue Number: PP-UT-MONTICELLO-08-0010-25

Organization: San Juan County

Protester: Bruce B. Adams

Issue Excerpt Text:

As justification for managing non-WSA lands with wilderness characteristics to solely preserve and

protect their wilderness values, BLM relies on the general management authority found in Section 202 of FLPMA and two BLM Instruction Memoranda 2003-274 & 2003-275. San Juan County acknowledges that Section 202 of FLPMA provide BLM with authority to manage lands for multiple use, and not allowing all uses on all lands. BLM, however, relies on Section 103 of FLPMA as authority for "allocating resource uses, including wilderness character management, amongst the various resources. . ." Monticello PRMP Comments of the Draft RMP/EIS by Resource, Record ID 4, Comment Number 21. Importantly, in Section 103(c) of FLPMA, Congress listed resources that BLM should take into account in allocating management, and "wilderness characteristics" is not included as such a resource. On the other hand, mineral development is a "principal or major use" of public lands under FLPMA. 43 U.S.C. § 1702(1). .

Issue Number: PP-UT-MONTICELLO-08-0010-26
Organization: San Juan County
Protester: Bruce B. Adams

Issue Excerpt Text:

Violation of the Settlement Agreement with the State of Utah By managing non-WSA lands solely to preserve wilderness characteristics, the BLM is violating its settlement agreement with the State of Utah. To justify this management, the BLM states that the "nothing in the Agreement shall be construed to diminish the Secretary's authority under FLPMA to manage a tract of land that has been dedicated to a specific use." Monticello PRMP Comments of the Draft RMPIEIS by Resource, Record ID 4, Comment Number 21. Many of these five areas proposed to be managed as wilderness are former Wilderness Inventory Areas (WIAs) created from the 1996-1999 wilderness re-inventory. The Utah v. Norton settlement agreement expressly states that "the 1999 wilderness re-inventory would not be used to create additional WSAs or to manage public lands as if they are or may become WSAs." Utah, 2006 WL 2711798 at *4. The settlement agreement mandates that BLM "will not establish, manage or otherwise treat public lands, other than Section 603 WSAs and Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization." Settlement Agreement 7; Utah, 2006 WL 2711798 at *21. Despite this settlement agreement, BLM seeks to create de-facto WSAs and wilderness areas in the RMP process. While BLM has discretion to manage lands to protect specific resources, it may not abdicate its multiple use mandate for public lands, nor its responsibility to give priority to major uses of public lands, such as minerals development. In

attempting to use the RMP process to protect lands solely for the protection of "wilderness characteristics," BLM has violated the Utah v. Norton settlement agreement.

Issue Number: PP-UT-MONTICELLO-08-0011-11
Organization: IPAMS
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

As justification for managing non-WSA lands with wilderness characteristics to solely preserve and protect their wilderness values, BLM relies on the general management authority found in Section 202 of FLPMA and two BLM Instruction Memoranda 2003-274 and 2003-275. IPAMS acknowledges that Section 202 of FLPMA provides BLM with authority to manage lands for multiple use, and not allowing all uses on all lands. BLM, however, relies on Section 103 of FLPMA as authority for "allocating resource uses, including wilderness character management, amongst the various resources..." Monticello PRMP Comments of the Draft RMP/EIS by Resource, Record ID 4, Comment Number 21. Importantly, in Section 103(c) of FLPMA, Congress listed resources that BLM should take into account in allocating management, and "wilderness characteristics" is not included as such a resource. On the other hand, mineral development is a "principal or major use" of public lands under FLPMA. 43 U.S.C. § 1702(1).

Issue Number: PP-UT-MONTICELLO-08-0011-13
Organization: IPAMS
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

By managing non-WSA lands solely to preserve wilderness characteristics, the BLM is violating its settlement agreement with the State of Utah. To justify this management, the BLM states that the "nothing in the Agreement shall be construed to diminish the Secretary's authority under FLPMA to manage a tract of land that has been dedicated to a specific use." Monticello PRMP Comments of the Draft RMP/EIS by Resource, Record ID 4, Comment Number 21. Many of these five areas proposed to be managed as wilderness are former Wilderness Inventory Areas (WIAs) created from the 1996-1999 wilderness re-inventory. The Utah v. Norton settlement agreement expressly states that "the 1999 wilderness re-inventory would not be used to create additional WSAs or to manage public lands as if they are or may become WSAs." Utah, 2006 WL 2711798 at *4. The settlement agreement mandates that BLM "will not establish, manage or otherwise treat public lands, other than Section 603 WSAs and Congressionally designated wilderness, as WSAs or

as wilderness pursuant to the Section 202 process absent congressional authorization." Settlement Agreement 7; Utah, 2006 WL 2711798 at *21. Despite this settlement agreement, BLM seeks to create de-facto WSAs and wilderness areas in the RMP process. As the chart details, BLM is essentially managing non-WSA lands with wilderness characteristics under FLPMA's § 603 non-impairment standard. While BLM has discretion to manage lands to protect specific resources, it may not abdicate its multiple use mandate for public lands, nor its responsibility to give priority to major uses of public lands, such as minerals development. In attempting to use the RMP process to protect lands solely for the protection of "wilderness characteristics," BLM has violated the Utah v. Norton settlement agreement.

Issue Number: PP-UT-MONTICELLO-08-0011-18
Organization: IPAMS
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

Thus, like the RARE inventories used in an attempt to create illegal wilderness areas, the "non-WSA lands with wilderness characteristics" lands that BLM seeks to protect in the Monticello PRMP are based on the 1999 Wilderness Re-Inventory that applied "the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the Wilderness Act of 1964." Utah Wilderness Inventory, U.S. Department of the Interior at vii (1999); Monticello PRMP at 3-79. Like the inventories in the

Roadless Decision, the inventories for wilderness characteristics undertaken at the direction of then Secretary Bruce Babbitt were based on the Wilderness Act's definition of wilderness. Monticello RMP at 3-79. By protecting these lands solely for their "wilderness" values, BLM is violating the Wilderness Act by circumventing the legislative process and creating de facto wilderness in the RMP process.

Issue Number: PP-UT-MONTICELLO-08-0011-23
Organization: IPAMS
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

By a 2006 Directive from the BLM Director, the BLM cannot effect a de facto closure of thousands of acres of public lands to oil and gas leasing without following FLPMA's Section 204 withdrawal procedures: "Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interests in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310." BLM Energy and Non-Energy Mineral Policy (April 21, 2006). The BLM formally adopted this policy through 1M 2006-197. Consequently, the 2006 Energy and Non-Energy Mineral Policy with which the BLM must comply, conditions the closure of lands available to mineral exploration and development on FLPMA's withdrawal procedures.

Summary

The BLM lacks the authority to manage lands for the protection of wilderness characteristics. Such management violates the Settlement Agreement with the State of Utah.

Response

As noted in the response to comments 4-21 (page 279 of response to comments, sorted by resource), the BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). The Tenth Circuit, in August 2008, declined to find that the BLM was prohibited from protecting lands it determined to have wilderness characteristics in a manner substantially similar to the manner in which such lands are protected as WSAs.

The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202 (43 U.S.C. §1712). This section of the BLM's organic statute gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Nothing in this section constrains the Secretary's authority to manage lands as necessary to "achieve integrated consideration of physical, biological, economic, and

other sciences” (FLPMA, Section 202(c)(2) (43 U.S.C. §1712(c)(2))). Further, FLPMA makes it clear that the term “multiple use” means that not every use is appropriate for every acre of public land, and that the Secretary can “make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use. . .” (FLPMA, Section 103(c) (43 U.S.C. §1702(c))) The FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides uses for current and future generations.

Wilderness Study Areas *Inventory of Wilderness Study Areas*

Issue Number: PP-UT-MONTICELLO-08-0018-37

Organization: Western Watersheds Project, Inc.

Protester: John G. Carter

Issue Excerpt Text:

While the BLM may argue that recommended WSAs submitted by the President to Congress in the 1990's need not be re-inventoried (because they remain "on the table" for Congress to act upon), this assumption certainly is erroneous with respect to WSAs not so recommended, or lands that have potential for wilderness. By virtue of the BLM's failure to continue to inventory these lands with respect to their wilderness suitability, the RMP fails to disclose any changes in the characteristics and wilderness suitability of those lands with wilderness potential that were not recommended and that may have occurred in the past two decades. The BLM's own Planning Handbook states: New information, updated analysis, or new resource use or protection proposals may require amending or revising land use plans and updating implementation decisions.

Response

The BLM does not have the authority to designate new WSAs under the land use planning process. The BLM has conducted additional inventories of public lands outside WSAs (1999 Utah Wilderness Inventory Report) to assess wilderness characteristics and the information gathered in these inventories has been considered in the RMP and made available to the public. The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202 (43 U.S.C. §1712). This section of the BLM's organic statute gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Nothing in this section constrains the Secretary's authority to manage lands as necessary to “achieve integrated consideration of physical, biological, economic, and other sciences.” (FLPMA, Section 202(c)(2) (43 U.S.C. §1712(c)(2))). The FLPMA makes it clear that the term “multiple use” means that not every use is appropriate for every acre of public land, and that the Secretary can “make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use. . . .” (FLPMA, Section 103(c) (43 U.S.C. §1702(c))).

The FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides uses for current and future generations. The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). In September 2006, the Utah District Court affirmed that the BLM retained

authority to protect lands it determined to have wilderness characteristics in a manner substantially similar to the manner in which such lands are protected as WSAs.

Motorized Use in Wilderness Study Areas

Issue Number: PP-UT-MONTICELLO-08-0017a-64

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

BLM Failed to Take a Hard Look at Impacts to WSAs from Route Designations The IMP identifies the following wilderness and related values that BLM must analyze in evaluating the impact to wilderness values under the nonimpairment standard when designating ways as official routes: How the proposed routes will (or will not) meet the conditions of the being substantially unnoticeable. How the proposed routes will reduce or improve the overall wilderness quality of the WSA. Soil stability, including erosion impacts. Condition or trend of the vegetation including plant species composition and vegetal cover. Natural biological diversity including numbers and species composition of microbes, invertebrates, fish, reptiles, amphibians, birds, and mammals. Key visual resource characteristics (form, line, color and texture) of the landscape. Naturalness. Opportunities for solitude. Opportunities for primitive and unconfined types of recreation, or quality of existing opportunities for primitive and unconfined types of recreation. Description of special features. Quality of surface water including dissolved solids, nutrient levels such as nitrates, and microbial concentrations. Threatened or endangered plant and animal species. See H-8550-1 II.B.6.c. The PRMP fails to disclose baseline information as to the current condition of the ways as well as the condition of the ways at the time of the wilderness inventory. BLM's statement that limiting ORV use to designated routes would "protect the natural character of the landscape of the WSAs" (PRMP at 4-519) falls far short of the hard look required by NEPA. It is insufficient, both under the IMP and under NEPA, for BLM not to analyze all direct, indirect, and cumulative impacts that are likely to occur from this decision. 40 C.F.R. §§ 1508.7, 1508.8. BLM must take the requisite hard look at the impacts of its proposal to designate ways and allow ORV use in WSAs, and revise the PRMP to reflect this analysis.

Response

Under the PRMP, the BLM is not proposing to allow motorized use of any ways or portions of ways within WSAs that are not currently authorized for motorized use; the PRMP and the No Action alternative are the same. Further, ways that have been open to motorized use prior to the signing of the ROD will remain open to motorized use under the approved plan.

The Interim Management Policy for Lands Under Wilderness Review (IMP) allows for continued use of inventoried ways in WSAs. The IMP does not specify that ways will be opened or closed. However, any use of ways must maintain the suitability of the WSA for designation as wilderness. The decision to allow continued use is based on a determination that such use does not affect wilderness suitability, therefore, vehicular use may continue. As for the identified routes (ways) available for motorized use, these routes have not resulted in impairment of wilderness values and are continually monitored. Where routes remain available for motorized use within WSAs, such use will continue on a conditional basis. Authorized use of the existing ways could continue as long as the use of these routes does not impair wilderness suitability, as provided by the IMP.

The impacts of the motorized use on the inventoried ways cited in the protest issue are discussed in Section 4.3.14.5. Impacts were found to be short-term and temporary. No long-term impairment to wilderness suitability will occur, because the BLM is required to monitor the ways and close any that are found to be causing impairment. As detailed above, the BLM has identified 5 ways in three WSAs on Cedar Mesa that are not cherry-stemmed and that are not

designated for closure. Four of these ways are open only for the limited purpose of providing administrative access. No motorized/mechanized recreational use will be allowed on any of these administrative access ways. The other way is open under an agreement with San Juan County and provides access to the Moon House trailhead. All other WSAs are closed to OHV use.

Requirements for Wilderness Study Area Monitoring Plans

Issue Number: PP-UT-MONTICELLO-08-0017a-62

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

The PRMP fails to include a monitoring schedule for the “ways” that will be designated as open routes in the WSAs and clear standards or commitments for closure. A detailed monitoring approach is also required under the BLM’s planning regulations: The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan. 43 C.F.R. § 1610.4-9 (emphasis added).

Issue Number: PP-UT-MONTICELLO-08-0017a-63

Organization: Southern Utah Wilderness Alliance et al.

Issue Excerpt Text:

In order to fulfill the mandates of the IMP and FLPMA, BLM should select the alternative that causes the least harm and provides the most benefits to the wilderness characteristics in the WSAs – the

PRMP does not do this. Any ways designated as open in WSAs must meet the criteria of the IMP and BLM’s ORV regulations, showing that they minimize impacts and do not impair wilderness suitability. BLM must also vigilantly monitor the conditions of these routes and their impact on wilderness suitability, and ensure that they are closed if use of the routes impairs wilderness values. BLM Instruction Memoranda 2000-096 directs WSAs be managed as Visual Resource Management (VRM) Class I. The object of VRM Class I is “to preserve the existing character of the landscape” and management is so that the “level of change to the characteristic landscape should be very low and must not attract attention” See, BLM official Visual Resource Management information website at: <http://www.blm.gov/nstc/VRM/vrmsys.html> (last visited Sept. 28, 2008). Although SUWA supports BLM’s proposal to manage the WSAs as VRM Class I (See PRMP at 4-519), other management decisions made in the PRMP regarding WSAs do not reflect the protection that should be afforded to VRM Class I areas. Specifically, the designation of 19 miles of ways as open routes for motorized vehicles will encourage motorized use of these ways, decreasing vegetation in these ways, and thereby increasing the visual impact of these ways in the WSA. The PRMP states that “[u]navoidable adverse impacts would occur from surface disturbance resulting from . . . OHV activity . . .” PRMP at 4-520. Thus, by BLM’s own admission, not designating 19 miles of ways (or alleged ways) in the Grand Gulch, Road Canyon and Fish and Owl Canyons WSAs would more fully comply with the stated goals of the IMP, BLM’s VRM requirements to make wilderness values paramount to other uses, and the ORV regulation’s mandate to minimize impacts to resources, including visual resources.

Summary

The PRMP fails to include a monitoring schedule for the “ways” that will be designated as open routes in the WSAs and clear standards or commitments for closure. A detailed monitoring approach is required under the BLM’s planning regulations.

Response

Plan monitoring and evaluation is discussed in the PRMP/FEIS in Section 1.3.7 and a monitoring plan will be included in the Record of Decision (See PRMP/FEIS at 1-14, 15). Monitoring will be conducted in accordance with all current guidance and the BLM Land-Use Planning Handbook H-1601-1. Specific monitoring and evaluation needs are identified by resource/uses throughout Chapter 2. Mechanized/motorized use is allowed on only one way in a WSA and that is the .08 mile access way to the Moon House trailhead. As detailed above, there will be four other ways open only for administrative use. Monitoring and management of vehicular impacts from the use of all ways will be conducted in accordance with the Interim Management Policy for Lands Under Wilderness Review, H-8550-1, Section II.D. This policy requires that no impacts be permitted that could affect the suitability of the WSAs for designation as wilderness.